



Neutral citation number: [2025] UKFTT 266 (GRC)

**First-tier Tribunal
(General Regulatory Chamber)
Standards and Licensing**

Appeal Reference: FT/SL/2024/0053

**Decided without a hearing on 21 January 2025
Decision given on 28 February 2025**

Before

JUDGE ANTHONY SNELSON

Between

JUSTINE KELLIHER

Appellant

and

COLCHESTER CITY COUNCIL

Respondent

DECISION

On considering the written representations on behalf of the Appellant and the Respondent, the Tribunal determines that the appeal is dismissed.

REASONS

Introduction

1. By this appeal, the Appellant challenges a financial penalty notice issued by the Respondent ('the Council') on 7 May 2024 for breach of the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order ('the 2014 Order')¹, articles 3 and 5 (duty to belong to an approved scheme). The penalty was set at £5,000.

2. The appeal came before me for final determination on the papers, neither party having requested a hearing. I was satisfied that it was just and proper to proceed in that way.

The statutory framework

3. By the 2014 Order, articles 3 and 5, persons who engage in lettings agency and/or property management work are required to be members of a redress scheme for dealing with complaints in relation to such work. Such a scheme may be one approved by the Secretary of State or designated by the Secretary of State as a government administered scheme.

4. Enforcement of the duties under the 2014 Order is the responsibility of the 'enforcement authority', namely the local Council (article 2).

5. Where an enforcement authority is satisfied that a person has failed to comply with an obligation under article 3 or article 5, it has power to impose a financial penalty in a sum not exceeding £5,000.

6. The schedule to the 2014 Order sets out a procedure which must be followed before a financial penalty may be imposed. The procedure provides for a notice of intent to be served before the enforcement authority takes a final decision whether or not to impose a penalty. It also makes a number of stipulations to do with the contents of penalty notices.

7. Article 9 of the 2014 Order provides that a person subject to a financial penalty under has a right to appeal to the First-tier Tribunal ('FTT') on any one or more of the following grounds: (a) the penalty was based on an error of fact; (b) the penalty was wrong in law; (c) the amount of the penalty was unreasonable and (d) the decision to impose the penalty was unreasonable for any other reason. Disposal of the appeal may take the form of quashing, confirming or varying the financial penalty notice.

¹ The Order was made under enabling powers contained in the Enterprise and Regulatory Reform Act 2013.

8. It is well-established that the FTT treats appeals in cases of the sort under consideration here as rehearings. It must simply make its own decision on the evidence before it (which may sometimes differ from that before the enforcement authority at the time of the decision under challenge).

The facts

9. The material facts can be stated quite shortly.

9.1 On 13 October 2023 a Private Sector Housing Officer ('PSHO') employed by the ('the PSHO') received information concerning a property at 24 Military Rd, Colchester ('the property'), which was said to be managed by the Appellant trading in the name of Athena Estates.

9.2 On 26 August 2023 the PSHO carried out Internet searches which disclosed no membership on the part of the Appellant or 'Athena Estates' of any approved or designated redress scheme.

9.3 On 30 October 2023 the PSHO received an email from the Property Redress Scheme stating that 'Athena Estates' had joined the scheme on 17 May 2017 but the membership had lapsed on 25 May 2021.

9.4 On 23 November the PSHO wrote to the registered owner of the property requesting confirmation of his management arrangement with 'Athena Estates.' The owner responded enclosing a signed management agreement showing 'Athena Estates' as the property manager.

9.5 On 8 December 2023 the PSOH sent a Notice of Intent to the Appellant at, it seems, the registered office of her then current company (see below), with a copy to her private address (derived from her council tax records).

9.6 On or about 6 March 2024 the Council received a notification from what purported to be a company or unincorporated association called Athena Estates Management, asserting that: (a) it had not been trading owing to 'owner's ill-health' and (b) it held a relevant redress scheme membership (reference number quoted).

9.7 On 13 March 2024 the PSOH was notified by the Property Redress Scheme that an entity calling itself Athena Estates Management had enrolled with the Property Redress Scheme on 4 March 2024, some weeks after delivery of the Notice of Intent.

9.8 On 7 May 2024 the Council issued the penalty notice under appeal, addressing it to the Appellant personally, 'trading as Athena Estates'.

9.9 In his response to the appeal on behalf of the Council dated 26 September 2024, the PHSO provided further information concerning companies apparently owned or operated by the Appellant. Having no reason to doubt the genuineness of this information, I accept it. Accordingly, I make the following findings. (a) Athena Estates East Anglia Ltd was incorporated

on 23 September 2016 and dissolved on 6 November 2018. The Appellant is listed as a director under a different surname from that shown above (perhaps a maiden name). (b) Athena Estates Agents Limited was incorporated on 20 November 2020 and dissolved on 19 July 2022. (c) Athena Property Management Ltd was incorporated on 2 November 2018 and dissolved on 7 May 2024. There is no evidence that any of these companies was a corporate vehicle for the management of the property.

The Appeal

10. In her notice of appeal, the Appellant appears to take one point only, namely that she was not, at the relevant time, engaged in lettings agency or property management work, owing to ill health. In fairness to her, she may, obliquely, also raise a question as to whether the penalty is rightly applied to her personally (as opposed to one of her companies).

11. The Council resists the appeal. It points out that, on the objective evidence available, the property was, at the relevant time, being managed by the Appellant. Moreover, none of her companies is shown to have been involved in the management of the property. Accordingly, the only reasonable inference is that the Appellant was engaging in the relevant work personally under the name of Athena Estates.

12. It is to be noted that the Appellants does not allege any procedural floor in the enforcement process and no challenge is raised based on the level of the penalty imposed.

Conclusions

13. I start with two observations. First, it seems to me that fairness requires me to give the Appellant's case the widest reading I can consistent with the language used. Accordingly, I treat it as raising both points identified in para 10 above. Second, her challenge rests on factual contentions which the Council disputes. Courts and tribunals resolve factual conflicts on *evidence*. Mere assertion is not enough. Absent any witness evidence, I must look at the documentary material alone and interpret it as best I can. The obvious difficulty for the Appellant is that she has to put forward an evidence-based case for saying that the penalty was vitiated by some error of fact (there is no suggestion from her of any error of law) or was otherwise, on some factual ground, inappropriate.

14. As to the first point of appeal, I cannot accept that the Council made an error of fact or otherwise misdirected itself in concluding that (subject to the second point) the Appellant was 'engaging' in lettings agency and/or property management work on the key date when the Notice of Intent was served (8 December 2023) (or, for that matter, at all times thereafter up to the date of issue of the penalty notice (7 May 2024)). The landlord had informed the Council that 'Athena Estates' was managing the property and, on 8 December 2023, provided documentary evidence in support. The unsubstantiated assertion on 6 March purportedly on behalf of 'Athena Estates Management' that the (unnamed) 'owner' of that business had (for an unspecified period) not been trading was no evidence whatsoever bearing upon whether the *Appellant* had been 'engaging' in relevant work in relation to the property – on 8 December 2023 or at any other time. Moreover, even if I were to assume (without evidence) that the Appellant had at a material time fallen ill and withdrawn from the day-to-day graft of letting agency and/or property management work, she might well have appointed an employee or agent to perform the 'hands-on' work on her behalf. Self-evidently, by doing so, she would not have ceased to 'engage' in the work and would not have been released from her obligations under the 2014 Order. Besides, the assertion that the Appellant had ceased to 'engage' in lettings agency and/or property management work in relation to the property leaves obvious questions: Who took over that work and why did the landlord not acknowledge or even refer to the substitute in his response to the PSHO's inquiry of 23 November 2023? For want of evidence, these questions are unanswered. In my view, for all of these reasons, the Council was quite right to find that the Appellant's 'engagement' extended up to 8 December 2023 and indeed up to 7 May 2024.

15. As to the second point, again, I find that the Council's decision-making was correct. It is evident that the Appellant traded as 'Athena Estates'. There was no limited company of that name, at least at any time relevant to this appeal. The only 'Athena' company in existence on 8 December 2023 seems to have been Athena Property Management Ltd, but there was and is no evidence that that company served as the corporate vehicle for the Appellant's management of the property. The Council has never suggested such a thing. Nor, not surprisingly, has the Appellant, since she denies having 'engaged' in its management (personally or through a limited company) at any material time. As for 'Athena Estates Management' there was and is no evidence to show that a limited company of that name existed at any material time. Even if it did, the comments above in relation to Athena Property Management Ltd would apply equally to it. For these reasons, I consider that the only rational choice open to the Council was to identify the Appellant personally as the proper candidate for the financial penalty, trading as 'Athena Estates'.

16. To repeat, and for the avoidance of doubt, the appeal is concerned only with the two points which I have identified. It is not said, for example, that the penalty was excessive or that a flawed process was followed. I have abided by my obligation to deal with the case in front of me.

17. For the reasons stated, no ground of appeal under the 2014 Order, article 9 is made out. The appeal is dismissed.

Signed Anthony Snelson
 Judge of the First-tier Tribunal
 Date: 14 February 2025