



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

Appeal Reference: PR/2019/0027

**Decided at Field House, London
On 1 October 2019**

Appearances:
For the Appellant, Mr Ali
For the Respondent, Mr S Fowles Counsel

In attendance:
Ms N Tudor
Mr L Wilson
Observer:
Ms Lienen

Before

JUDGE JACQUELINE FINDLAY

Between

ABBY HOMES GROUP LTD

Appellant

and

LONDON BOROUGH OF TOWER HAMLETS

Respondent

DECISION AND REASONS

Decision

1. The appeal is dismissed. A monetary penalty of £2,500 is appropriate in all the circumstances for the breach of the requirement to belong to a redress scheme.

Legislation

2. The relevant legislation appears in the bundle at pages 6.1 to 6.15. The Guidance for Local Authorities on The Redress Schemes for Lettings agency Work and Property Management work (Requirement to Belong to a Scheme etc) (England) Order 2014 appears at pages 6.16 to 6.24 of the bundle.

Background

3. Abby Holmes Group Limited was incorporated on 2 May 2017 with a registered address of 3 Pepper Street, London E14 9RB. Mr Mohammed Ali is the sole Director and shareholder.
4. The Respondent served a Notice of Intent dated 16 January 2019 on Mr Mohammed Ali, Director of Abby Holmes Group Limited (page 1.1).
5. A Final Notice dated 12 April 2019 was served on the Appellant on that date (pages 1.3 and 1.4). The Final Notice states that the Appellant, as a letting agent, failed to comply with the duty to belong to an approved redress scheme and as a property management agent the Appellant failed to comply with the duty to belong to an approved redress scheme. The date of the breach was 16 January 2019 (page 1.3).

The Hearing

6. I have considered the Respondent's Response and the bundle of documents numbered 1.1 to 7.49. I have heard a submission and oral evidence from Mr Ali who confirmed he was content to proceed without a representative. I considered there was no injustice in so doing taking into account that Mr Ali was clearly intelligent and mentally lucid and was well able to present his case and had had ample opportunity to prepare his case. I have heard an oral submission from Mr Fowles, on behalf of the Respondent.

The Appellant's case

7. Mr Ali, on behalf of the Appellant, submitted in his appeal notice the following grounds of appeal:
 - a. This is the first time that membership of an approved redress scheme was not renewed in 7 years.
 - b. The economy is in a bad place and East London has been hard hit.
 - c. Mr Ali lost about 38% of business and had four people working for him and now only two.
 - d. With new requirements he is even more hard hit.
 - e. The amount of the financial penalty is unreasonable for his small business.

- f. He received correspondence from the Property Ombudsman but it did not say that he would be fined.
- g. He and his wife have just had their first baby and he is suffering from long term anxiety.
- h. He has been in business for 7 years and has not had issues like this before.
- i. He has dyslexia which makes it hard for him to write and read e-mails.
- j. The reason he did not renew The Property Ombudsman (“TPO”) was due to lack of funds. He found out that some Councils do not accredit TPO so he looked into becoming a member of the UK Association of Letting Agents (“UKALA”). He had difficulty in obtaining the necessary letters from his bank to satisfy UKALA.
- k. He has now joined UKALA and sorted out his website.

The Respondent’s case

- 8. The Respondent submits the following points:
 - a) It is not in issue that the Appellant was not in compliance with Articles 3 and 5 of the Redress Schemes for lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014.
 - b) The Respondent took into account the representations of the Appellant when deciding on the level of the monetary penalty and adopted the approach advised by the statutory scheme and the Secretary of State’s guidance.
 - c) The Appellant can afford to pay the monetary penalty imposed
 - d) The Appellant previously received considerable information and guidance about its duty to belong to an approved redress scheme.
 - e) The Appellant’s non-compliance was conscious and calculated.

Findings of Fact and Reasons

- 9. Abby Homes Limited was dissolved on 8 August 2017.
- 10. Abby Homes Group Limited was incorporated on 2 May 2017 (page 7.5 and 7.6).
- 11. Mr Ali is the sole Director and shareholder of Abby Homes Group Limited, the Appellant. He is the proper person to be responsible for the acts and omissions of the Appellant.
- 12. The Appellant became a member of The UK Association of Letting Agents on 24 January 2019.
- 13. The letter dated 3 April 2019 (page 2.9) states that the Final Notice is enclosed with this letter. The Final Notice is dated 12 April 2019. The inconsistency in the dates is because

the letter was written before the Final Notice was served on 12 April 2019 but it was not served on the Appellant until 12 April 2019. The date of the Final Notice is the date it was served namely 12 April 2019.

14. It is likely that the letter from Mr John McCrohan, Trading Standards and Licensing Manager, (pages 7.15 and 7.16) dated 30 September 2014 was sent to the Appellant company.
15. It is likely that the letter dated 4 June 2015 from Mr McCrohan, Trading Standards and Licensing Manager, (pages 7.17 and 7.18) was sent to the Appellant company.
16. Mr Rovai, Trading Standards Team Leader, sent a letter to The Proprietor, Abby Homes Limited, 3 Pepper Street, London E14 9RP on 23 May 2016 (pages 7.19 and 7.20).
17. It is likely that Ms Nichola Tudor, Senior Trading Standards Officer with the Respondent, had a telephone conversation with Mr Ali on 24 May 2016 and that Ms Tudor explained to Mr Ali what information was required.
18. The Appellant ceased to be a member of The Property Ombudsman on 18 October 2018 because the membership fees were not paid. Mr Ali was aware of the consequences of failing to be a member of a redress scheme.
19. The Property Ombudsman sent a letter to the Appellant dated 18 October 2018 giving notice that membership had been terminated with immediate effect and that “an estate/letting agent who is not a member of an approved redress scheme will be trading illegally and Local Authority Officers have the power to impose a penalty charge for failure to comply with the new requirement.” The letter from the Property Ombudsman dated 18 October 2018 was handed in at the hearing by Mr Ali.
20. It is likely that the Appellant ceased carrying on estate agency work before the date of the Final Notice.
21. Mr Ali has submitted Bank statements for account number 90583774 for the period from 3 December 2018 to 5 February 2019. The Appellant had a Barclays Bank account number 30194352 showing a closing balance on a date unknown of £2,864.37 overdrawn (page 7.47).
22. The Appellant held a client Barclays Bank account number 70789771 as at 21 January 2019 (page 7.32).
23. The statements for account number 90583774 appear at pages 7.33 to 7.43. The company had a closing balance on 5 February 2019 of £19,770.79 in credit.
24. The Notice of Intent and Final Notice contain all the information as required and comply with the legislative requirements.
25. On 10 January 2019 the Appellant was in breach of Article 3 of The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc)(England) Order 2014 (page 6.9) in that the Appellant was engaged in

lettings agency work and was not a member of a redress scheme. Mr Ali accepts this was the situation.

26. On 10 January 2019 the Appellant was in breach of Article 5 of The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc)(England) Order 2014 (page 6.9) in that the Appellant was engaged in property management work and was not a member of a redress scheme for dealing with complaints in connection with that work.
27. Mr Ali was aware that a failure to be a member of a redress scheme might result in the imposition of a monetary penalty. On receipt of the Notice of Intent Mr Ali was aware of what that monetary penalty would be, namely £5000.
28. Mr Ali's evidence was inconsistent, for that reason unreliable and I have not been able to attach weight to it. Examples of the inconsistencies are as follows:
 - a) In the letter of appeal Mr Ali stated, "Financial issues, having my first baby boy" and "me and my wife had our first baby which we trying so hard for so long" (page 2.4). In oral evidence Mr Ali told me that his son was born on 8/8/18 and it was not, in fact, his first child and was his second son.
 - b) In the letter of appeal Mr Ali stated both that "I had four people working or me and now there are two" (page 2.3) and "I started last years with three people working for me and now I have one" (page 2.4).
 - c) In the letter of appeal Mr Ali stated, "I did receive a letter from property ombudsman stating renewal however it never once said or indicated that I will be fined such amount" (page 2.4).
 - d) The letter from The Property Ombudsman dated 18 October 2018 and received by Mr Ali states (An estate/letting agent who is not a member of an approved redress scheme, will be trading illegally and Local Authority Officers have the power to impose a penalty charge for failure to comply with the new requirement."
 - e) The Notice of Intent (pages 1.1 and 1.2) states "We intend to impose a monetary penalty of £5000.00." It is no in issue that the Notice of Intent was received by Mr Ali.
29. In relation to the level of the monetary penalty I have considered whether there are any extenuating circumstances, whether the amount of the penalty is unreasonable and whether the level of the penalty would be likely to put the Appellant out of business. I find there are no extenuating circumstances to reduce the level of the monetary penalty which has already been reduced from £5000 to £2500. In reaching this decision I have taken into account the length of time of the breach and reasons for the breach.
30. I did not find the financial information submitted by Mr Ali to be persuasive. I did not find that the evidence submitted gave a full and frank disclosure of the Appellant's financial health and viability. Mr Ali has had ample opportunity to submit the company accounts and has chosen not to do so.

31. On the basis of the limited information available I find that the monetary penalty would not put the Appellant out of business and it is not disproportionate to the turnover of the business. The copy Bank statements for Barclays account number 90583774, from 03/12/18 to 04/01/19 (pages 7.33 to 7.42), do not support the Appellant's submissions that the Appellant would be unable to pay the monetary penalty and the penalty would put the Appellant out of business.
32. Accordingly, the appeal is dismissed.

J R Findlay
First-tier Tribunal Judge
1 October 2019

Signed: 8 November 2019
Promulgation Date: 19 November 2019