



Decision of the Homeowner Housing Committee issued under the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012

HOHP reference: HOHP/PF/15/0117

Re: 3/2 12 West Princes Street, Rothesay, Bute PA20 9AF ('the property')

The Parties:

Mrs Wendy Marshall, 22A Pepler Avenue, Salter Point, Perth 6152, Western Australia ('the homeowner')

Bute Factors Ltd, 53 Victoria Street, Rothesay, Isle of Bute, PA20 0AP ('the property factor')

The Homeowner Housing Committee: Martin McAllister, legal member and Liz Dickson, housing member.

Decision by a Committee of the Homeowner Housing Panel in respect of an application under section 17 of the Property Factors (Scotland) Act 2011 (the 2011 Act).

Decision of the Committee

The Committee hereby determines that the property factor enforcement order has not been complied with.

The decision was unanimous.

Reasons for Decision

The Committee made a property factor enforcement order on 17th May 2016 which was served on the parties on 18th May. The property factor enforcement order (PFO) was in the following terms:

1. The property factor requires to amend the statement of services issued to homeowners at 10-16 West Princes Street, Rothesay to ensure that it complies with the Code of Conduct for Property Factors. Said amendment must be undertaken prior to any termination of services to the homeowner.

2. The property factor has to undertake to the homeowner housing panel committee that it will in future respond timeously to enquiries and complaints by homeowners and that its correspondence to homeowners will comply with the terms of the Code. Said undertaking must be provided within twenty one days of service of this order.

3. The property factor has to undertake to the homeowner housing panel that it will, in future, obtain authority from homeowners where it is intended to charge an additional fee for services. Said undertaking must be provided within twenty one days of service of this order.

4. The property factor will pay compensation of £150 to the homeowner and this will be paid within twenty eight days of the property factor enforcement order.

Notice of the proposed PFEO had been given to the parties on 18th April 2016 and both parties had made representations.

Subsequent to the PFEO being made both parties made representations. The committee considered the representations and the extent to which the PFEO had been complied with. The committee considered each matter in turn:

1. The property factor requires to amend the statement of services issued to homeowners at 10-16 West Princes Street, Rothesay to ensure that it complies with the Code of Conduct for Property Factors. Said amendment must be undertaken prior to any termination of services to the homeowner.

The property factor in representations sought advice from the committee as to how the written statement of services be amended. The committee considered that it was not for it to advise the property factor on such matters and that it was for the property factor to ensure that the written statement of services complies with the Code of Conduct for Property Factors. The property factor submitted an amended version of the written statement of services. The homeowner submitted an extensive analysis on an almost line by line basis on what she considered the defects in the amended statement of services to be. She also suggested that a statement of compliance is issued from a recognised third party such as an experienced legal firm or that the homeowner housing panel itself assess compliance. The committee considered that its function is not to revise the amended statement of services, or to issue some kind of certificate of conformity, or to agree or disagree with the homeowner on her detailed analysis but it did consider that its role is to examine the defects referred to in its Decision dated 18th April 2016 and to determine whether or not the amended written statement of services remedied the defects found.

a) The written statement of services did not set out the types of services which might be required in addition to the core services and did not set out how any fees or charges in relation to those additional services may be charged. The amended version did, in the committee's view, address this defect.

b) The written statement of services set out a timescale of ten days for a response to a complaint. It did not set out any timescale for dealing with enquiries. The amended version did not address this defect and in this respect the committee determined that the property factor had not complied with the PFEO. The committee saw this as unfortunate given that only a minor amendment would have been needed to set out a timescale for responding to enquiries.

c) In its Decision dated 18th April 2016 the Committee determined that the complaints procedure set out in the written statement of services was defective because it did not set out any information on the process of the complaint, how long consideration of it would take and whether or not there is an internal appeal procedure. There was also inadequate signposting to the Homeowner Housing Panel. The amended written statement of services properly referred to the Homeowner Housing Panel but in other respects did not address the defects found by the committee in respect of the complaints procedure of the property factor.

2. The property factor has to undertake to the homeowner housing panel committee that it will in future respond timeously to enquiries and complaints by homeowners and that its correspondence to homeowners will comply with the terms of the Code. Said undertaking must be provided within twenty one days of service of this order.

In its letter to the homeowner housing panel dated 24th May 2016 the property factor gave an undertaking which the committee considered to be in appropriate terms.

3. The property factor has to undertake to the homeowner housing panel that it will, in future, obtain authority from homeowners where it is intended to charge an additional fee for services. Said undertaking must be provided within twenty one days of service of this order

In its letter to the homeowner housing panel dated 24th May 2016 the property factor gave an undertaking which the committee considered to be in appropriate terms.

4. The property factor will pay compensation of £150 to the homeowner and this will be paid within twenty eight days of the property factor enforcement order.

The committee considered that there are two aspects to complying with this aspect of the PFEO. The first is payment and the second is doing so timeously. Surprisingly there were a number of representations regarding this matter and the parties were not in agreement. It is useful to set out the following:

4.1 Notice of the proposed PFEO was given on 18th April.

4.2 On 26th April the property factor advised that "a cheque has been prepared for Mrs Marshall and will be released when the proposals become final." A copy of this letter was sent to the homeowner.

4.3 The homeowner made representations on the proposed PFEO on 10th May and made no comment on the reference to a cheque contained within the property factor's letter of 26th April.

4.4 The PFEO was made on 17th May 2016 and was served on 18th May 2016.

4.5 In its letter of 24th May the property factor stated that a cheque had been sent to the homeowner and enclosed a copy of a letter to the homeowner dated 24th May enclosing a cheque for £150. The committee also had sight of a copy of the cheque for £150 and dated 26th April 2016.

4.6 The homeowner made representations on 21st June where she states that "as of today no payment has been received." She also states " I can't cash or bank a British cheque. Only an electronic bank transfer can occur. BFL would know this." The homeowner did not state whether or not she had received a cheque from the property factor.

4.7 On 20th July 2016 the homeowner made representations which state:

"The HOHP compensation determination was made April18,2016.....BFL is fully aware that my wife operates a UK bank account.....BFL have knowledge of these bank details from the many thousands of pounds that have been electronically transferred over the past 2 years....BFL have not corresponded with us to enquire how the transfer of funds could occur....the cheque referred to is dated 26th April, the attached letter containing the cheque is dated 24 May and the envelope containing the letter and cheque is postmark dated 23 June 2016." The homeowner offers to provide scans to confirm the dates mentioned in the representations.

4.8 The property factor sent representations dated 21st July which states that the cheque was issued on 25th May which was within the period specified on the order. The property factor states " from previous contact Mr Marshall has advised us that mail appears to go through a clearing centre on Malta (?). This probably explains the post mark of 23rd June 2016. Clearly the letter and cheque have been received." The property factor accepts that they have previously received money transfers from the homeowner but that the entries on their bank statements only give minimal details of the source. The property factor disputes that a UK cheque cannot be negotiated in Australia and they state that their bankers have confirmed this. The property factor states that they consider the payment to have been paid and received.

The committee considered matters. What does not appear to be in dispute is that a cheque for £150 and dated 26th April 2016 has been sent to the homeowner and has been received. What is in dispute is whether or not this constitutes timeous payment. The committee determined that it could not establish when the letter with the cheque

was sent or when it was received. Arguably it is possible that the cheque was received outwith the time specified in the PFEO but is entirely possible that it was dispatched within the timescale of the PFEO. The committee considered that what is important is that the cheque has been received. The committee did not accept the homeowner's contention that she "can't cash or bank a British cheque." It is possible to present a UK cheque to an Australian bank. It may not be desirable because of the charges and the delay in the funds clearing but it is possible. More importantly the homeowner has a UK bank account and she can presumably send the cheque to her bank in the UK asking that it be credited to her account. The committee accepted that it would have been easier for the funds to have been directly transferred into the UK account but did not accept that the property factor was obliged to do that. The homeowner also chose not to make representations soon enough as to how she would have wanted the payment to be made. What was persuasive was the fact that the homeowner was given a copy of the property factor's representations of 26th April 2016 where there was reference to a cheque and at that time could have had an opportunity to indicate the preferred method of payment.

The committee considered, on balance, that the property factor has complied with that aspect of the PFEO.

The committee determined that the PFEO has not been complied with in two respects relating to the written statement of services and that the first numbered paragraph of the PFEO has not been complied with.

Effect of Decision

Notice of the failure to comply will be sent to Scottish Ministers in accordance with Section 23(2) of the 2011 Act.

Appeals

The parties' attention is drawn to the terms of section 22 of the 2011 Act regarding their right to appeal and the time limit for doing so. It provides:

"...(1) An appeal on a point of law only may be made by summary application to the Sheriff against a decision of the President of the Homeowner Housing Panel or a homeowner Housing Committee.

(2) An appeal under subsection (1) must be made within the period of 21 days beginning with the day on which the decision appealed against is made...."

Chairman of Committee

Date 25th July 2016

Martin J. McAllister