



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

hohp Ref: HOHP/PF/15/0118 & 119

Re: Property known as 52 and 100 Hawk Brae, Livingston, West Lothian (“the Properties”)

The Parties:-

- 1. John and Dorcas Bainbridge, 52 Hawk Brae, Livingston, West Lothian EH54 6GE**
- 2. Patricia Quin, 100 Hawk Brae, Livingston, West Lothian EH54 6GF (“the Applicants”)**

Property Factor: Be-Factored Ltd, 2a North Kirklands, Eaglesham Road, Glasgow G76 0NT (“the Respondent”)

**Decision by a Committee of the Homeowner Housing Panel
In an Application under section 17 of the Property Factors (Scotland) Act 2011**

Committee Members:

John McHugh (Chairman) and Susan Shone (Housing Member).

Decision

The Committee hereby determines that the Property Factor Enforcement Order has not been complied with.

The decision is unanimous.

Reasons for Decision

The Committee issued a Property Factor Enforcement Order (“PFE0”) on 8 March 2016 in the following terms:

“Within 42 days of the date of the communication to the Respondent of this property factor enforcement order, the Respondent must:

1 Make no further demand for payment of sums from the Applicants. The Respondent should treat the Applicant’s accounts as having a nil balance. This will be without prejudice to any obligation on the part of the Respondent to apply any credits or to make any payments to the Applicants’ accounts.

2 Provide to the Applicants a document containing a full accounting reconciliation of all intromissions by the Respondent with funds relating to the Development during the final 12 months of its acting as property factor.

The reconciliation document must be accompanied by a copy of all financial records relating to the Development and, in particular, should include all invoices (paid or unpaid), all receipts and all bank statements. It should include opening and closing balances.

The reconciliation document must be accompanied by a certificate signed by a chartered accountant who is independent of the Respondent. The certificate should confirm the name, contact details and professional qualifications of the accountant. The certificate should contain confirmation by the accountant:

a) that he has been provided with: (i) a copy of the Committee’s Decision and the PFEO and (ii) a copy of all invoices, receipts, accounts, bank statements or financial records which he reasonably requires; and

b) that he is reasonably satisfied that the reconciliation presents an accurate record of the Respondent’s handling of the funds relating to the Development.

3 Provide to each of the Applicants a separate statement of account particular to that Applicant showing the opening balance, all payments received by the Respondent from the Applicant, all charges levied or other credits applied to the Applicant’s account and the remaining balance.

4 Provide a copy to the office of the HOHP of all documents produced in satisfaction of paragraphs 2 and 3 of this PFEO together with confirmation that the accounting adjustments required by paragraph 1 of this PFEO have been made.”

On 8 April 2016, The Committee, on the application of the Respondent, extended the time limit for compliance with the PFEO until 23 May 2016.

In terms of section 23(1) of the 2011 Act, the Committee is to determine whether the Respondent has complied with the PFEO.

The Committee gave consideration to the extent to which the PFEO had been complied with.

The Committee gave consideration to the Respondent's written response received on 20 May 2016 and to Ms Quin's email of 6 April 2016.

The PFEO required the provision of certain information. It is evident that the documentation supplied by the Respondent falls short of what is required by the PFEO.

The most obvious omission is the certificate which was required to be obtained from an independent Chartered Accountant. That requirement was a key part of the PFEO and was included in order to provide confidence to the Committee (and to the Applicant) that the information provided in compliance with the PFEO was accurate.

It is impossible to have confidence that what has been provided is a full accounting reconciliation of all relevant financial intrusions as required by the PFEO and the Committee does not find what has been produced by the Respondent to meet the terms of the PFEO.

The Respondent has failed to produce bank statements as required (none have been produced and no explanation for this failure has been provided). The Respondent also volunteers that it has excluded from its response certain documents on the basis that it considers them to include personal information. The Committee considers that those documents could have been produced and the Respondent could have redacted any personal information.

As regards the failure to provide a certificate from an accountant, the Respondent cites difficulties in obtaining a willing accountant. The Respondent explains that certain (unnamed) accountants have refused their services as they were reluctant to have their certificate passed to the HOHP or to be involved at a later stage in the proceedings. The Respondent has provided an email of 27 January 2016 in which its own accountant, quite properly, refused to assist on the basis that he would not be independent. An email from a second accountant dated 27 April 2016 refuses on the grounds of his staffing levels and the required time frame. Neither of those emails evidence refusal for the reasons provided in the Respondent's letter.

The Committee accordingly hereby finds that the PFEO has not been complied with.

Ms Quin has expressed a concern that the Respondent has failed to provide a statement showing a nil balance on her account. While it might have been helpful, we do not consider that strict compliance with the PFEO required this. Ms Quin's objection had been raised before her receipt of the Respondent's documents produced on 20 May 2016 and we note that the statements now provided to each Applicant appear to show a balance due by them to the Respondent. We assume however that these documents are internal accounting documents and we are prepared to proceed on the basis that production of "nil" statements is not required given that the Respondent has confirmed (by email 29 April 2016) that it is treating both of the Applicants' accounts as having no further sums due in respect of them.

Effect of Decision

Notice of the failure to comply will be sent to the 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...”

Signed

Date16 July 2016.....

JOHN M MCHUGH

Chairperson