



Property Factor Enforcement Order made under Section 19(2)(a) of the Property Factors (Scotland) Act 2011 (“the Act”) following upon a Decision of the Homeowner Housing Committee in an application under Section 17(1) of the Act

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.

This document should be read in conjunction with the Committee’s Decisions under Section 19(1) (a) of the Act dated 18th April 2016 and 17TH May 2016.

Whereas in its Decision dated 18th April 2016 the Committee determined that the property factor had failed to comply with the Code of Conduct for Property Factors and it determined to issue a property factor enforcement order (PFEO) and the required notice of the proposed PFEO was given to parties in terms of Section 19 (2) of the Act; the Committee having considered representations made by both parties now makes the following property factor enforcement order:

- 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.

Failure to comply with a property factor enforcement order may have serious consequences and may constitute an offence.

Appeals

Parties' attention is drawn to the terms of Section 22 of the Act regarding the 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 the decision of the president of the homeowner housing panel or a homeowner housing committee.

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

(3) The decision of the sheriff under this section is final.”



Chairperson Signature

Date 17th May 2016

Martin J. McAllister



Decision of the Homeowner Housing Committee issued under Section 19(3) of the Property Factors (Scotland) Act 2011 and 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, having made such enquiries as it saw fit for the purposes of determining whether the factor has complied with the Code of Conduct for property factors, as required by Section 14 of the 2011 Act

Determines that, in relation to the homeowner's Application, the factor has not complied with the Code of Conduct for property factors and makes the following property factor enforcement order:

- 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.

Background

1. By application dated 9th August 2015 the homeowner applied to the Homeowner Housing Panel ("the Panel") for a determination that the property factor had failed to comply with the Code of Conduct for Property Factors (hereinafter referred to as "the Code") and had failed to carry out the property factor's duties in relation to the property owned by her being the eastmost house on the top floor at 12 West Princes Street, Rothesay, Isle of Bute ("hereinafter referred to as "the property").
2. The Committee made a determination on the application and issued its Findings on 18th April 2016 together with a proposed property factor enforcement order. The Terms of the proposed property factor enforcement order were as follows:
 - (i) 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.
 - (ii) 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.
 - (iii) 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.
 - (iv) 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.
3. Parties were given until 5th May 2016 to make representations with regard to the proposed property factor enforcement order.
4. The property factor made representations on 27th April 2016. They sought guidance on what should be contained within their Statement of Services

and stated that “for the purpose of the exercise your findings are being accepted.” They indicated that a cheque for compensation had been prepared. The property factor also sent correspondence indicating that they had intimated that they would be terminating their services as property factor as at 31st May 2016.

5. The property factor sent a further communication on 12th May 2016.
6. The homeowner sent an email on 27th April which states that the property factor had resigned, sought guidance in relation to any property factor enforcement order and then states that the email is to be considered as representations but that other representations would follow. The homeowner sent an email of 2nd May 2016 which sought to take issue with the findings, asked if the Committee had knowledge that the property factor was resigning and dealt with other matters either administrative or in connection with current or recent matters regarding the property.
7. The homeowner sent a further communication on 10th May 2016 in which the homeowner states that he is unaware if his correspondence of that date can be accepted “in terms of the Act and the Code.”
8. The Committee considered the representations and determined that it could only take cognisance of those submitted by 5th May 2016.
9. The property factor’s representations appeared to the Committee to be such that they were accepting the proposed property factor enforcement order.
10. The homeowner’s representations did not address the proposed property factor enforcement order in any detail. They addressed the Findings, administrative matters or current/recent issues with the property. The point made by the homeowner in relation to whether or not the Committee had knowledge of the property factor’s intention to resign was considered not to be relevant. As a matter of fact the Committee did not know of the property factor’s intention but noted that the Statement of Services provided for such termination of services.
11. The Committee required to consider the terms of the proposed PFEO. It saw no reason not to issue the PFEO in relation to items 2, 3 and 4. The Committee considered the relevance of ordering the property factor to amend its Statement of Services in relation to the property in terms of item 1 and considered that it was still appropriate to include this in the PFEO since it was always possible that the property factor might withdraw the resignation. The Committee recognised that the Statement of Services it had seen in relation to the application was probably the style used by the property factor for other properties and it considered that the property factor would benefit from examining whether or not such Statements of Services

require amendment in the light of the findings of the Committee. The Committee considered it appropriate that the Statement of Services be amended prior to the property factor terminating its services as property factor. The Committee also considered it reasonable to impose a time limit for implementation of the undertakings to be given to the homeowner housing panel.

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...."

Regulation 26 (3) indicates that the decision is made "by giving notice of the decision" to the parties.

Chairman of Committee

Date 17th May 2016

Martin J. McAllister