propertymark

Ms Sally Beard

Director, Fineholm Letting Services (Edinburgh) Limited t/a Fineholm

Disciplinary Tribunal Decision

29 April 2021

Disciplinary Tribunal Decision

Member:	Ms Sally Beard formerly MARLA MNAEA
Position:	Director
Company/Employer:	Fineholm Letting Services (Edinburgh) Limited t/a Fineholm
Address:	11 Grove Street, Edinburgh, EH3 8AF
Reference:	X0059422
Date:	29 April 2021

A. INTRODUCTION

A Disciplinary Tribunal of Propertymark Limited was convened on 29 April 2021 using the Zoom virtual conferencing platform to consider the case against Ms Sally Beard.

The panel members were Mr Neville Pedersen MARLA (Honoured) FNAEA (Honoured) (member panellist acting as the Chairperson for the Tribunal), Mr Michael Jones PPNAEA (Honoured) MARLA (member panellist) and Mr Stephen Shaw (lay panellist).

The presenting Case Officer for Propertymark was Miss Laura Hanley-Gorton.

Ms Beard was in attendance at the hearing accompanied by Ms Ellen Hamilton, Office Manager of Fineholm.

The hearing took place in private and was recorded.

B. ALLEGATIONS

The Tribunal considered the allegations set out in the case summary sent to Ms Beard on 8 April 2021.

It was alleged that Ms Beard had acted in contravention of the requirements of the following Propertymark Conduct and Membership Rules.

Propertymark Conduct and Membership Rules

1.1. Introduction to the Accounting Rule

1.1.3. In a partnership or company, all partners or directors share the responsibility of maintaining a proper bookkeeping system. Any misappropriation or error by one partner, director or a member of staff is the responsibility of every principal, partner or director. It is therefore incumbent upon all principals, partners and directors to satisfy themselves that any breach in the rules is rectified immediately.

1.7. Access to, or availability of, Client Money

A member must ensure that, at all times, all Client Money is held in Client Bank Accounts and is available on demand to Clients without undue delay or penalty. (For the avoidance of doubt, Client Money must not be placed or held in off-shore accounts or fixed/variable rate term bonds or similar funds or arrangements, unless the bank or building society falls within the definitions in 1.2, funds are available on demand and any penalty for withdrawal is paid by the member's firm.) Note: Any penalty for withdrawal of Client Money must be limited to interest earned.

1.14. Payments out of a Client (Bank) Account

A member's firm should withdraw, transfer or make a payment from a Client Bank Account only in the following circumstances:

1.14.1. Money paid in to open or maintain the account in accordance with clause 1.13.1 of this Rule and where it is no longer required.
1.14.2. Money paid into the account in accordance with clause 1.13.4 of this Rule, which does not belong to the Client, for payment to the person lawfully entitled to it.
1.14.3. Within three working days of becoming aware of a relevant contravention, money paid into the account in contravention of this Rule.
1.14.4. Money payable to a Client, or, to an appropriate person suitably authorised (in writing) to receive such payments on that Client's behalf.
1.14.5. Money being paid directly into another Client Bank Account.
1.14.6. Reimbursement of money to the member's firm for money expended by the member's firm on behalf of the Client.
1.14.7. Money lawfully and contractually due, in respect of a PPD member's firm's fees and charges.
1.14.8. Legitimate disbursements, e.g., amounts subject to invoices, costs or demands incurred or received on behalf of the Client.
1.14.9. Provided that in the case of money drawn under sub-clauses 1.14.6 and 1.14.7 above:

(a) The payment is in accordance with lawful and contractual written arrangements (for example via terms of business, pre-contract/tenancy application documents, tenancy agreement, letter of engagement), previously agreed between the parties.

or (b) The Client, or an authorised representative, has been notified or invoiced in writing by the member's firm of the amount and purpose for which the money is being withdrawn and no objection has been raised within a reasonable timescale.

1.14.10. Provided always that, under rule 1.14, no payment shall be made for or on behalf of an individual Client that exceeds the total amount held on behalf of that particular Client.

1.15. Timing of Banking

1.15.2. All payments out of a Client bank account should be made promptly, and within not more than 1 calendar month of becoming due.

1.23. Reconciliations – format and frequency

1.23.1 Every member's firm shall:

(a) Ensure all monies due to the member firm are removed prior to final reconciliation being undertaken.

(b) At least once every two calendar months (and within no later than ten weeks of a previous reconciliation), reconcile the balance on their Client's cash book(s)

(i) With the balance in their Client Bank Account(s) using the bank/building society statement(s); and

(ii) With the total of each Client's balance in the Clients' ledger; and

(c) Ensure that such documents necessary to support the reconciliation so produced have been kept safe, complete and readily available in the cash book or other appropriate place

1.23.2 All such reconciliations should be checked and signed by the PPD member of the company, or by such person formally appointed by the PPD, who shall not be the person responsible for the preparation of such reconciliation. (This could be a member of staff of the appointed reporting Accountant, provided this is carried out within ten working days of the reconciliation.)

1.23.3 Reconciliations must be stored so as to be readily available at audit or inspection, in accordance with **1.21.**

13. General duty to uphold high standards of ethical and professional behaviour

13.1.2 Involves other unprofessional practice or practice that is unfair to members of the public.

21. Continuing professional development (CPD) rules

21.1. CPD is mandatory for all ARLA, ARLA Inventories, NAEA, NAEA Commercial and NAVA members except for Affiliate, Deferred, Retired grade members.

21.2. Members are required to undertake at least twelve hours' CPD activity per year. At least four of the twelve hours must be obtained by attendance at relevant educational events and up to eight hours by relevant private study (except for those studying for Propertymark Qualifications relevant to their specialism). All CPD should be relevant to the membership specialism and/or relevant to business needs.

21.3. The CPD year runs from 1 January to 31 December and the twelve hours should be submitted by 31 January of the following year, listing the learning outcomes.

21.4. CPD must be provided annually for membership to continue.

21.5. If members belong to more than one division, they are required to submit twelve hours/ CPD for each division demonstrating a relevant learning outcome.

C. DECISION

The Tribunal considered the submissions from the Case Officer and Ms Beard and after deliberation came to the following findings:

Rule 1.1.3	-	Admitted.
Rule 1.7	-	Admitted.
Rule 1.14	-	Admitted.
Rule 1.15.2	-	Admitted.
Rule 1.23	-	Admitted.
Rule 13.1.2	-	Admitted.
Rule 21	-	Withdrawn.

Ms Beard submitted a plea in mitigation.

D. SANCTIONS

Rule 1.1.3	-	£250
Rule 1.7	-	£250
Rule 1.14	-	£250
Rule 1.15.2	-	Caution

Rule 1.23	-	Caution
Rule 13.1.2	-	Caution

In addition, costs were imposed of £294 against Ms Beard in favour of Propertymark.

E. PUBLICATION

The outcome of the hearing fell within the Propertymark publication policy.

F. CLOSING STATEMENT

The Tribunal made the following statement:

"The Tribunal would like to thank Ms Beard and her Office Manager, Ellen Hamilton, for their attendance at today's Tribunal Hearing and for their input which has been most helpful.

From the evidence presented there has been a lack of financial control over a period of time caused, in part, by staffing issues.

From information provided and accepted by the Tribunal this has been addressed and whilst Ms Beard is no longer in membership, she endeavours to fulfil and follow the rules as if she were.

The Tribunal felt this was a case of poor financial control rather than deliberate intent in relation to client account shortfall.

The penalties levied indicate the thoughts of the Tribunal into the seriousness of the breaches against the level of penalty that could have been imposed."