



[2023] UKFTT 521 (GRC).

Case Reference: PEN/2023/0044

First-tier Tribunal
General Regulatory Chamber
Pensions Regulation

Heard by: Judge in Chambers on the papers

Decision given on: 20th June 2023

Before

HHJ DAVID DIXON

Between
R AND M GYM LTD

and

THE PENSIONS REGULATOR

Appellant

Respondent

Decision: The reference is dismissed and the matter is remitted to the Regulator. The Penalty Notice is confirmed, without any further directions.

REASONS

1. By this reference R and M Gym Limited (“the Employer”), challenges a fixed penalty notice (“FPN”) issued by the Regulator on 9th January 2023.
2. The FPN was issued under s. 40 of the Pensions Act 2008. It required the Employer to pay a penalty of £400 for failing to comply with the requirements of a compliance notice (CN) issued on 7th November 2022. The Compliance Notice was issued under s. 35 of the Pensions Act 2008. It directed the Employer to file a redeclaration of compliance by 19th December 2022.
3. The Employer referred the matter to the Tribunal on 14th February 2023.
4. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended. The Tribunal considered all the evidence and submissions made by both parties.

The Appeal

5. Under s. 44 of the 2008 Act, a person who has been issued with a FPN may make a reference to the Tribunal provided an application for review has first been made to the Regulator. The role of the Tribunal is to make its own decision on the appropriate action for the Regulator to take, taking into account the evidence before it. The Tribunal may confirm, vary or revoke a FPN and when it reaches a decision must remit the matter to the Regulator with such directions (if any) required to give effect to its decision.
6. The Employer’s Notice of Appeal, dated 14th February 2023, indicates the obligations to have all employees within a scheme were met by the due date and therefore the FPN should be reversed. It also asserts that a fine of £400 is severe in the circumstances that exist at the moment.
7. The Regulator’s Response indicates that the Appellant initially argued that the CN was not received. They assert the presumptions of service apply. They also assert that whilst the scheme may be compliant that is only one of the requirements that exist. The Appellant is also required to declare that compliance has been met. Here they failed to do so without any basis.
8. The FPN was sent to the same registered address as the CN. The Regulator provides materials indicated that well before the CN regular reminders were sent to the Appellant, which were not heeded.
9. The Regulator indicates a Review was completed as a result of the Appellant’s request. Having considered the circumstances advanced the FPN was confirmed.
10. The Tribunal considered a bundle of 134 pages.

Submissions

11. The Appellant seeks to have the notices overturned on the basis that all employees were within a scheme and that the level of fine isn't fair or appropriate.
12. The Regulator responds that there is no excuse for non-compliance, let alone a reasonable one. It is the Employer's responsibility to meet the legal requirements, and here the Appellant has not provided evidence to reverse the imposition of the FPN.
13. The Regulator maintains that the CN and FPN were correctly posted and following the presumptions is deemed to have been received, unless contrary material is shown to rebut the presumptions. The Regulator avers no such material is shown and as such the Notices was correctly served.

Conclusion

14. I find that the Appellant has failed to provide any proper basis for not complying with the CN. The responsibility for completing the declaration rests with the employer and here it could have and should have dealt with matters.
15. The fact that employees were registered under an approved scheme is to the Appellant's credit, but it doesn't subvert the requirement to file a declaration of the same. The failure to supply such a declaration is a clear breach of the regulations.
16. The FPN was therefore entirely appropriate.
17. The standard penalty fixed by law was imposed. The penalty is designed to remind "companies" of the importance of compliance and I do not see that the penalty in this case is inappropriate or disproportionate to the breach.
18. I have considered the entity itself, the submissions advanced about the consequences to the Appellant, but nothing said renders the penalty unjust or disproportionate. The penalty is there for a reason set by Parliament and nothing here subverts the clear intention of the legislature.
19. In all the circumstances I am driven to the view the appeal has no merit and I remit the matter to the Regulator, upholding the FPN.
20. No further directions are required

Signed: HHJ David Dixon

DATE: 20th June 2023