

propertymark

Mr Murugan Ponnambalam,

Director,

VEL Estate Limited t/a VEL Estate

Disciplinary Tribunal Decision

January 2024

Disciplinary Tribunal Decision

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| Member: | Mr Murugan Ponnambalam, a suspended member of NAEA and of ARLA |
| Position: | Director |
| Company/Employer: | VEL Estate Limited t/a VEL Estate |
| Address: | Unit 12b Stanley House, Wembley, HA0 4JB |
| Complainant: | Propertymark |
| Reference: | Y0002302 |
| Date: | 31 January 2024 |

A. INTRODUCTION

A Disciplinary Tribunal of Propertymark Limited was convened on 31 January 2024 to consider the case against Mr Ponnambalam.

The panel members were Mr Richard Hair PPNAEA (Honoured) (Retd) (member panellist acting as the Chairperson for the Tribunal); Ms Jacqueline Stone FNAEA (member panellist); and Mr Clive Wood (lay panellist).

The presenting Case Officer for Propertymark was Mr Ali Haider.

Mr Ponnambalam attended the Hearing online via Zoom.

The Hearing took place in private and was recorded.

B. ALLEGATIONS

The Tribunal considered the allegations set out in the case summary sent to Mr Ponnambalam.

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

1.6. Key elements

- 1.6.1. The relevant membership division requires its members to comply with these rules in respect of their Client Accounts to ensure that Clients' Money is protected. The key basic elements that must apply to Clients' Money entrusted to a PPD member's firm are as follows:

- (a) Each transaction must be properly recorded in the PPD member's firm's books/ledgers of account (paper, electronic or otherwise) so that it is clearly identifiable to an individual Client.
- (b) Monies must be paid into a specifically designated Client (Bank) account with a recognised bank or building society and thus kept separate from the member's firm's own money.
- (c) All transactions must be monitored and reconciled on a regular basis.

1.6.2. Client (Bank) Accounts must be properly designated (see clause 1.9 below), easily identifiable and the individual beneficial owners of any money contained therein should be attributable, without difficulty, for the following main reasons:

- (a) To prevent a bank or building society offsetting a credit balance in one account against a debit or charge incurred by another.
- (b) To enable a receiver or liquidator or other investigator to identify money that does not belong to the member or their business.
- (c) To allow such accounts to easily be monitored and reconciled both internally and externally to demonstrate the financial integrity.

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 offshore 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.

1.9. Title and conditions of a Client (bank) Account

- 1.9.1. All members who receive, or may receive, deposits in transactions to which the Estate Agents Act (1979) applies, shall open, and operate a distinct Clients' Account for that purpose in accordance with the requirements of that Act and with the Regulations made under it.
- 1.9.2. A PPD member's firm that receives or holds Client money must maintain at least one Client (bank) Account for this purpose.
- 1.9.3. Any such account(s) must include both the word "Client" and the legal name of the Principal Agent or CASP in the title.
- 1.9.4. The PPD member's firm must hold on file in its records; written confirmation from any bank or building society where a Client bank account is held, that the following conditions apply to any such account(s):

- (a) All money held in the account is Clients' Money; and
- (b) The bank or building society is not entitled to combine the account with any other account or to exercise any right of set-off or counter claim against money in that account in respect of any sum owed to it on any other accounts of the member or the member's firm.

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. Always provided 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.

1.23. Reconciliation(s) – format and frequency

1.23.1. Every member's firm shall:

- (a) Ensure all monies due to member firm are removed prior to final reconciliations 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 conducted 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. No member shall do any act (whether in business or otherwise) which:

- 13.1.1. Involves dishonesty, deceitful behaviour, misrepresentation; and/or
- 13.1.2. Involves other unprofessional practice or practice that is unfair to members of the public; and/or
- 13.1.3. In any other way brings Propertymark or any of its divisions or subsidiaries into disrepute.

23. Continuing professional development (CPD) rules

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

23.2. 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.

23.3. 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.

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

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

Mr Ponnambalam entered a plea accepting the alleged breaches of Rules 1.6.1(b), 1.7, 1.9 and 23 but denying the alleged breaches of Rules 1.14, 1.23 and 13.

After consideration of the evidence presented and submissions by the parties, the Tribunal announced the following findings:

C. DECISION

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|---------------|---|----------|
| Rule 1.6.1(b) | - | Admitted |
| Rule 1.7 | - | Admitted |
| Rule 1.9 | - | Admitted |
| Rule 1.14 | - | Proven |
| Rule 1.23 | - | Proven |
| Rule 13 | - | Proven |
| Rule 23 | - | Admitted |

D. SANCTIONS

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|---------------|---|----------------|
| Rule 1.6.1(b) | - | £500 |
| Rule 1.7 | - | £200 |
| Rule 1.9 | - | Formal Warning |
| Rule 1.14 | - | £200 |
| Rule 1.23 | - | £200 |
| Rule 13 | - | Formal Warning |
| Rule 23 | - | Caution |

In addition, the costs of this Hearing of £454 were imposed against Mr Ponnambalam in favour of Propertymark.

E. PUBLICATION

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

F. CLOSING STATEMENT

“The lack of a client account is of paramount importance in this case. Whilst we accept the member’s past failings, we are very pleased to note the positive actions taken to resolve the issue. We note the member is currently suspended and agreed this suspension should now be lifted”.