

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2011] NZREADT 40

READT 017/11, 018/11 & 020/11

IN THE MATTER OF

an appeal under s.91 of the Real Estate Agents Act 2008

BETWEEN

**THE REAL ESTATE AGENTS
AUTHORITY**

Applicant

AND

DAVID RANDALL

Respondent

MEMBERS OF TRIBUNAL

Judge P F Barber - Chairperson
Mr G Denley - Member
Ms J Robson - Member

HEARD at CHRISTCHURCH on 19 December 2011

DATE OF DECISION: 22 December 2011

COUNSEL

Mr L J Clancy for applicant
Mr M I Withers for respondent

**EDITED ORAL REASONS FOR DECISION OF THE TRIBUNAL
(DELIVERED BY JUDGE BARBER)**

[1] The three charges of misconduct have been conceded by the respondent. Penalties have been imposed as recorded in a 19 December 2011 Memorandum of Consent dated between the above parties confirmed by Order of this Tribunal.

[2] Upon that Memorandum being completed in 19 December 2011 the following was pronounced by the chairman on behalf of the Tribunal.

[3] There are a few things I would like to say on behalf of this Tribunal. First, we congratulate the parties on, in effect, settling the outcome of these three main charges as a result of a sentencing indication from the Tribunal. We emphasise that we have not approached these issues nor encouraged, to some degree, this outcome in a cavalier manner. We think that the outcome is reasoned and we cover some of the factors, not particularly in order of priority, which have led us into facilitating our Orders. Some of these points are mitigating, some are aggravating.

[4] It seems to us that Mr Randall is entitled to some credit for having been in the real estate industry for nearly 20 years, apparently without complaints until recently

when there seem to have been a host of somewhat similarly themed complaints. We take that into account.

[5] We also take into account that, in effect, Mr Randall made a guilty plea at the commencement of the hearing rather than at the end of it, and the hearing would have taken at least three days.

[6] Although the briefs of evidence filed with our Registrar are concerningly accusatory of Mr Randall, there are usually two sides to a story and, to some extent, he has given explanations. We take that into account.

[7] Mr Randall has been prepared to withdraw his appeals against the Authority's two recent decisions which we have referred to in the Memorandum of Consent. That means that those Orders of the Authority stand and they involve fines of over \$9,000 and orders about taking relevant education. As a result of those appeals being withdrawn, the carefully reasoned Orders made by the Authority stand.

[8] We take into account that Mr Randall is willing to undertake educational courses of the type referred to. We hope he will learn from those that he certainly must show a vendor all offers made with regard to the vendor's property, and we note that there is a multi offer process form which agents complete these days.

[9] Also, we hope that Mr Randall will realise that under the new (2008) Act one only need look at its s.3 to realise that the focus is on the interests of consumers and the public, whereas in the past agents have focused on the interests of the vendor they represent. Now the Act focuses on the inherent nature of conduct by an agent and its effect on anyone concerned, not just a vendor, but anyone else involved. The question of protecting consumers and promoting public confidence in the performance of real estate agency work is to be done in various ways one of which, of course, is by supervision. It concerns us that perhaps because Mr Randall has been in the industry for so long, he does not seem to have had much supervision with regard to the various messes that he has got into over the last couple of years.

[10] The educational courses which Mr Randall is now required to take will, we sincerely hope, alter his thinking as to the standard of conduct these days required from real estate agents. We have already said that good conduct is expected from a real estate agent not just towards his or her vendor but also towards the public, and there needs to be transparency and fairness in all dealings. That is a wider focus than under the prior legislation.

[11] Having said that, frankly, we find rather inexplicable Mr Randall's conduct in the various cases before us, and which have gone before the Committee of the Authority. By and large, he did not seem to profit much himself except that he did get some commissions which he would not have otherwise got. Maybe, he was over stressed at the time for personal reasons. Maybe, his processes became muddled for such personal reasons. We have already referred to a lack of supervision.

[12] We emphasize that Mr Randall is a man who has been in the industry for 20 years, apparently without much complaint, and then within the past couple of years complaints about quite concerning matters have led to significant fines. Today, another set of charges have led to his suspension. That is a concerning pathway which, hopefully, has come to an end. Mr Randall needs to realise that if any more

offending surfaces as from today along any of these themes, he could well have his licensed suspended for a couple of years or even cancelled.

[13] There must be publication of these cases. There already has been with regard to some of Mr Randall's activities. That is part of the punishment package, so to speak.

[14] Finally, we think this outcome is somewhat similar to what might have been the case had, over the next three days, or more, we heard all the available witnesses (with cross examination of them) and got right down to the nitty gritty of factual detail and found the charges proved; except that we think the suspension period would have been greater.

[15] We have dealt with charges in the way set out in the Memorandum with the focus on suspension for nine months. Because we accept that Mr Randall's financial position is very poor, it seemed futile to impose further fines. However, in the ordinary course we would have imposed significant fines and/or costs. We feel that we have been a little kind to Mr Randall because, unless he has perjured himself, his financial position is disastrous.

[16] We record that we had reserved the right to edit and refine the content of the above. We have set out the above to make it clear that we have given much thought to what one might call a semi-negotiated outcome because that is, probably, an unusual approach in this Tribunal to date, although currently in the criminal courts one may seek a sentencing indication and/or attend a Status Hearing.

[17] The above is confirmed by the said Members.

Judge P F Barber
Chairperson

Mr G Denley
Member

Ms J Robson
Member