

[2012] NZREADT 29

READT 059/10

**IN THE MATTER OF**

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

**AND**

**REAL ESTATE AGENTS  
AUTHORITY (CAC 10036)**

**AND**

**WILLIAM HUME**

Defendant

**BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

Ms K Davenport – Chairperson  
Ms J Robson – Member  
Mr G Denley – Member

**HELD** on the papers

**COUNSEL**

Mr Clancy – for the Real Estate Agents Authority  
Ms Burlace – Counsel for Mr Hume

**DECISION OF THE TRIBUNAL ON PENALTY**

[1] The Tribunal have read their submissions of the CAC and counsel for Mr Hume as to the appropriate penalty to be imposed after the Tribunal's decision dated 7 December 2011. In this decision Mr Hume was found guilty of unsatisfactory conduct on two of the charges that he faced.

[2] The principles of sentencing are:

*A penalty must fulfil the following functions. They are:*

a) *Protecting the public*

*Section 3 of the Real Estate Agents Act provides that this is one of the purposes of the Act.*

b) *Maintenance of professional standards*

*This was emphasised in Taylor v The General Medical Council<sup>1</sup> and Dentice v The Valuers Registration Board<sup>2</sup>.*

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<sup>1</sup> [1990] 2 All ER 263

<sup>2</sup> [1992] 1 NZLR 720

c) Punishment

*While most cases stress that a penalty in a professional discipline case is about the maintenance of standards and protection of the public there is also an element of punishment – such as in the imposition of a fine or censure. See for example the discussion by Dowsett J in Clyne v NSW Bar Association<sup>3</sup> and Lang J in Patel v Complaints Assessment Committee<sup>4</sup>).*

d) *Where appropriate, rehabilitation of the agent must be considered – see B v B<sup>5</sup>.*

[3] There is debate about whether or not the purpose of a penalty in a disciplinary case is to punish the agent or whether or not the purpose is simply public safety and maintenance of standards. Notwithstanding this debate, the Tribunal does have the power to impose a penalty upon Mr Hume which includes a fine upon him. The CAC submit that the appropriate fine under s.93(1)(e) of the Act is approximately \$5,000. They make this submission on the basis that there is a need to emphasise importance of compliance with the rules and that the defendant was indifferent to his obligations in this case and the fact that he had another finding of unsatisfactory conduct (albeit on appeal).

[4] Counsel for Mr Hume urged the Tribunal to accept that Mr Hume has made significant changes to his practice since the time of this complaint and the other finding of unsatisfactory conduct have occurred. She submitted that he has moved to a more professional (his words) agency and in that agency has had significant in-house training in his obligations under the new legislation and Client Care Rules. Ms Burlace submits that the finding of unsatisfactory conduct should in itself be sufficient penalty for Mr Hume.

### ***The Tribunal's Decision***

[5] The Tribunal have considered the submissions carefully and read the other finding on unsatisfactory conduct: which occurred at around the same time. We conclude that Mr Hume seems to have been rather lax in his attention to necessary paperwork and his discussions with his clients. It is noted that he has moved to a new agency and has received further training and understands better now his obligations under the new Act and his own personal obligations. We do not think therefore that there is any need for retraining of Mr Hume but note again that he cannot hide behind his dyslexia. It is his responsibility to ensure that all the necessary steps were taken to comply with the Real Estate Agents Act. He did not do this.

[6] We have considered the fee account from Hughes and Robertson but consider this would have been incurred by the trustees in any event. We also consider that the issue of commission is one which ought to be resolved between the parties in the Civil Court and should not be the subject of an order by the Tribunal.

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<sup>3</sup> (1960) 104 CLR 186 at 201-202

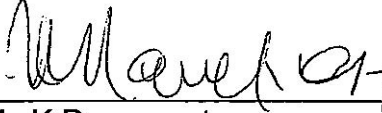
<sup>4</sup> HC Auckland CIV 2007-404-1818; Lang J; 13/8/07


<sup>5</sup> HC Auckland, HC 4/92 6/4/93; [1993] BCL 1093

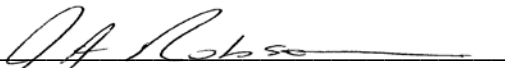
[7] For this reason we consider that it is appropriate that a fine be imposed upon him pursuant to s.93. Having taken into account all of the matters set out in counsel's submissions and in previous cases, we determine that a fine in the sum of \$1,750.00 is the appropriate penalty. We impose a fine pursuant under s.93(i)(g).

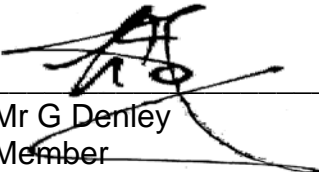
[8] The Tribunal draw the parties' attention the right of appeal to the High Court contained in s.116 Real Estate Agents Act.

**DATED** at AUCKLAND this 30th day of May 2012

  
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Ms K Davenport  
Chairperson



  
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Ms J Robson  
Member

  
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Mr G Denley  
Member