

## **BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

Decision no: [2012] NZREADT 43

Reference no: READT 037/12

**UNDER**

Sections 92 and 115 of the Real Estate Agents Act 2008

**BETWEEN**

**REAL ESTATE AGENTS  
AUTHORITY (CAC20006)**

Prosecutor

**AND**

**MS ZOHREH HOMEL AZIMI**

Defendant

### **MEMBERS OF TRIBUNAL**

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

### **HEARD ON THE PAPERS**

**DATE OF THIS DECISION:** 30 July 2012

### **COUNSEL**

Mr S Wimsett for prosecutor  
Mr G Newell for defendant

### **DECISION AS TO INTERIM SUSPENSION PURSUANT TO S.115 REAL ESTATE AGENTS ACT 2008**

#### ***Background***

[1] On 22 June 2012 we received not only formal charges from the Authority alleging misconduct by the defendant based on various alleged frauds, but also an application (with supporting affidavit) from the prosecution for suspension of the defendant's Real Estate Agents Licence pending the outcome of a hearing for the substantive charges.

[2] The appropriate procedure regarding suspension of licence pending outcome of hearing is covered in some detail in s.115 of the Act which we set out and refer further below.

[3] The application is made on the grounds that it is necessary or desirable to suspend the defendant's licence No. 10013497 as a licensed salesperson having regard to the interests of the public including:

1. Protection of the public in light of the serious nature of the charges, namely:

- (a) allowing a fraudulent loan application to be made in her name to Kiwibank for the purchase of a property at 3185 Great North Road, Auckland;
  - (b) involvement in a fraudulent mortgage scheme.
2. The public interest in ensuring that real estate agents maintain high standards of honesty and integrity.

[4] The application is made in reliance on ss.91, 92, and 115 of the Act and the affidavit of Chris Delaney filed in support of the application of the prosecution. Mr Delaney is an investigator with the Real Estate Agents Authority and he sets out in his affidavit serious allegations against Ms Azimi which relate to the details of the charges.

### **The Charges**

[5] The charges against Ms Azimi read as follows:

#### **“1. Charge in relation to the fraudulent loan application**

- 1.1 *Complaints Assessment Committee 20006 (Committee) charges the defendant with misconduct under s 73(a) of the Real Estate Agents Act 2008 (Act) in that her conduct would reasonably be regarded by agents of good standing, or reasonable members of the public, as disgraceful.*

#### **Particulars:**

*On 15 April 2012, the defendant allowed a fraudulent loan application to be made in her name to Kiwibank for the purchase of a property at 3185 Great North Road, Auckland.*

#### **2. Charge in relation to involvement with a fraudulent mortgage scheme**

- 2.1 *Following a complaint made by Peter Thompson (Complainant), Complaints Assessment Committee 20006 (Committee) charges the defendant with misconduct under s 73(a) of the Real Estate Agents Act 2008 (Act) in that her conduct would reasonably be regarded by agents of good standing, or reasonable members of the public, as disgraceful.*

#### **Particulars:**

- (a) *Between 2007 and 2011, the defendant listed, sold, re-listed and sold the property at 23 Glenmore Road, Sunnyhills, knowing that she was doing so to facilitate the commission of a fraudulent mortgage scheme;*
- (b) *Between 2007 and 2011, the defendant listed, sold, re-listed and sold the property at 3/78 Paihia Road, One Tree Hill, knowing that she was doing so to facilitate the commission of a fraudulent mortgage scheme;*
- (c) *Between 2007 and 2011, the defendant listed, sold, re-listed and sold the property at 287 Hillsborough Road, Waikowhai, knowing that she*

was doing so to facilitate the commission of a fraudulent mortgage scheme;

- (d) *Between 2007 and 2011, the defendant listed, sold, re-listed and sold the property at 289 Hillsborough Road, Waikowhai, knowing that she was doing so to facilitate the commission of a fraudulent mortgage scheme.”*

### **Initial Response to the Charges**

[6] At this stage, the response of Mr Newell, counsel for the defendant, is as follows:

*“The allegations against Ms Azimi are disputed. However, she does not presently wish to make any further comment other than to state that she believes it is unfair for her to be suspended prior to determination of the allegations”.*

### **Section 115 of the Act**

Section 115 is the provision of the Act dealing with the Tribunal's power to order the interim suspension of a license pending the outcome of a hearing. Section 115 provides:

#### **115 Suspension of licence pending outcome of hearing,**

- (1) *The Tribunal may suspend the licence of a licensee where*
- (a) *a licensee has been charged under section 91; and*
  - (b) *the Tribunal considers that it is necessary or desirable to suspend the licence having regard to the interests of the public.*
- (2) *The process for suspending a licence under this section is as follows:*
- (a) *the Tribunal must give a licensee written notice of its intention to suspend the licence; and*
  - (b) *the notice must -*
    - (i) *contain the Tribunal's reasons for the intended suspension; and*
    - (ii) *state that the licensee has 10 working days within which to make written representations to the Tribunal as to why the licence should not be suspended; and*
    - (iii) *state the proposed period, or otherwise describe the proposed duration, of the suspension; and*
  - (c) *if any written representations are made by the licensee within the period referred to in paragraph (b)(ii), the Tribunal must take those representations into account in deciding whether to suspend the licence and the period or duration of any suspension; and*
  - (d) *the Tribunal must then decide whether to suspend the licence, and notify the licensee accordingly, as soon as practicable.*
- (3) *If the Tribunal decides to suspend the licence, the Tribunal must give the licensee and the Registrar written notice of its decision and*
- (a) *include in the notice the grounds for the decision, the date on which the suspension takes effect, and the period or duration of the suspension; and*

- (b) *specify in the notice the right of the licensee to appeal to the High Court under section 116.*

### **Discussion**

[7] The pre-requisite to ordering interim suspension is that the licensee has been charged under s.91 (refer s.115(1)(a)). The ground for interim suspension is set out in s.115(1)(b) as follows: *“(b) The Tribunal considers that it is necessary or desirable to suspend the license having regard to the interests of the public.”*

[8] The procedure for suspending a license is set out in s.115(2). The Tribunal must give a licensee written notice of its intention to suspend the license (s.115(2)(a)). The notice must contain, among other things, the Tribunal's reasons for the intended suspension and the proposed period of the suspension (s.115(2)(b)(i) and (iii)). The notice must also state that the licensee then has ten working days to make written submissions to the Tribunal as to why his or her license should not be suspended (s.115(2)(b)(ii)).

[9] The Tribunal must then make a final decision and provide notice accordingly to the licensee (s.115(2)(d) and (3)).

[10] As Mr Wimsett put it, the purpose of the s.115(2) procedure for suspending a licence is to ensure that a licensee is given the opportunity to be heard and to respond to any application made to suspend his or her licence pending the outcome of a hearing.

[11] Mr Wimsett submitted that, in the present case, the purpose of the section has already been met by the procedure which has been followed which, essentially, is that I issued a memo to the parties on 2 July 2012 inviting from the defendant submissions and evidence in opposition to the application for interim suspension or discussion about a Consent Order. The latter aspect is not pursued.

[12] While I appreciate the submission of Mr Wimsett that Ms Azimi has been given the opportunity to be heard and to respond, and that it can be argued that the procedure we have followed to date is such that s.115 has been complied with, we take the view that the procedure set out in s.115 needs to be followed precisely.

[13] The s.115 process is that, once we consider it is desirable to consider suspension under s.115, we are to give the licensee notice of our intention to suspend her licence. This notice must contain our reasons for the intended suspension, and must state that the licensee has ten working days in which to make written representations to the Tribunal as to why the licence should not be suspended, and state the proposed period or otherwise of the proposed duration of the suspension.

[14] The grounds upon which we can consider the prosecution's said application for interim suspension are if the licensee has been charged under s.91, and we consider it necessary or desirable to suspend her licence having regard to the interests of the public. We do consider that the evidence before us, prima facie, discloses serious wrongdoing such that there is a serious risk to the public if Ms Azimi remains able to continue to practice as a real estate agent pending the outcome of the charges.

**Notice**

[15] This decision, therefore, operates as notice under s.115(2) of the Act. We hereby give to Ms Azimi written notice of our intention to suspend her licence. The reasons for the intended suspension are set out in this ruling and, in particular, at paragraphs [4], [5] and [14] above.

[16] Ms Azimi has ten working days from the service of this order upon her within which to make written representations to us as to why her licence should not be suspended. We shall then make a decision whether to suspend Ms Azimi's licence and notify her as soon as practicable. If we decide to suspend her licence we shall also comply with s.115(3) as set out above.

[17] The proposed period of the suspension is for a period of nine months or until the hearing of the charge under s.91, whichever date is the earlier.

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Judge P F Barber  
Chairperson

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Ms J Robson  
Member

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Mr G Denley  
Member