

Decision No: [2012] NZREADT 45

Reference No: READT 007/12

IN THE MATTER OF

an appeal under s.111 of the Real Estate Agents Act 2008

BETWEEN

AARON CARL DREVER

Appellant

AND

**REAL ESTATE AGENTS AUTHORITY
(CAC 10067)**

First Respondent

AND

RICHARD PODWIN

Second Respondent

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

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

APPEARANCES

The appellant in person
Mr Clancy for the First Respondent
No appearance for the second respondent

DECISION AFTER HEARING ON 20 JULY 2012

Introduction

[1] Mr Drever appeals the decision of the Complaints Assessment Committee dated 29 September 2011. In that decision the Complaints Assessment Committee found Mr Drever guilty of unsatisfactory conduct because they found he had breached s 126 of the Act which requires a real estate agent to provide a copy of the Agency Agreement to the client within 48 hours of the agency agreement being signed.

[2] Following a complaint from the second respondent Mr Drever told the CAC that he had failed not to give a copy of the agreement to the client within 48 hours. His evidence before the CAC was that it was normal practice of his firm to send a "thank you for listing" letter with a copy of the Agency Agreement annexed within 24 hours of the Agency Agreement being signed. He said that the office had done so in this case and only when he realised that the owners of the property did not have a copy did he sent them a further copy. He argued that the CAC had failed to take into account this evidence. The Tribunal agree.

[3] Mr Drever undertook to provide the Tribunal with a copy of the “*thank you for listing*” letter and to see whether or not the franking machine of his office could tell when this letter was sent. The letter was dated 29 November and shows at the bottom the enclosed Agency Agreement. The Agency Agreement was dated 29 November 2010 and thus set on the same day.

[4] Mr Drever has maintained this position from the start of the complaint. The Tribunal are unable to understand why the Complaints Assessment Committee did not accept this evidence from by Mr Drever and which was uncontradicted.

[5] A clear examination of the evidence shows that there is no evidence on the balance of probabilities (being the appropriate standard) to prove that Mr Drever did not send the owners of the property a copy of the Agency Agreement within 48 hours of the listing. All evidence is to the contrary and s 126 was complied with. It is interesting to note that the complaint came not from the owners of the property themselves but from a disgruntled competitor who had previously listed the property but had failed to sell it.

[6] The Tribunal therefore reverses the decision of the Complaints Assessment Committee and determines to take no further action on the complaint pursuant to s 80 of the Real Estate Agents 2008.

DATED at AUCKLAND this 3rd day of August 2012

Ms K Davenport
Chairperson

Ms J Robson
Member

Mr G Denley
Member