

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

Decision No: [2012] NZREADT 58

Reference No: READT 77/11

IN THE MATTER OF

charges laid under s.91 of the
Real Estate Agents Act 2008

BETWEEN

**REAL ESTATE AGENTS
AUTHORITY (CAC 10063)**

Prosecutor

AND

RAJNEEL RAJ (licensed
salesperson)

Defendant

MEMBERS OF TRIBUNAL

Judge P F Barber - Chairperson
Ms J Robson - Member
Mr J Gaukrodger - Member

PENALTY HEARING PART-HEARD at AUCKLAND on 20 September 2012

DATE OF THIS MEMORANDUM 21 September 2012

REPRESENTATION

Mr L J Clancy, counsel for prosecution/Authority
No appearance by defendant

**MEMORANDUM REGARDING DEFENDANT'S NON-APPEARANCE AT
SENTENCING**

Background to Date

[1] Our decision of 3 July 2012 [2012] NZREADT 37 convicted the defendant of a number of charges of misconduct detailed therein.

[2] At a 1 August 2012 directions teleconference, we ordered that the matter of sentence/penalty be dealt with at 10.00 am Thursday, 20 September 2012, at Auckland; and that the prosecution file and serve its submissions by 5 September 2012 and the defendant by 12 September 2012. The prosecution had, effectively, filed its submissions on 31 July 2012 prior to that teleconference, but it filed updated submissions on 19 September 2012, acknowledging their lateness.

[3] Until then there had been no participation in this case by the defendant. However, on 20 September 2012 (shortly prior to the fixture regarding penalty) he emailed our registrar putting it that neither he or his "*appointed counsel*" had been given sufficient time to file submissions about penalty and this had been compounded by his only receiving the prosecution submission on 19 September 2012, rather than 5 September 2012 in terms of the timetable order. He requested further time to file his submission to overcome his "*disadvantaged situation*" and that, in the meantime, we not grant leave for Ms M Polares and Mr M Dalangin to give evidence "*without the chance of myself or my counsel to cross examine them*".

[4] A little later, in a further email, the defendant stated that he was not in a position to attend the penalty hearing of 20 September 2012 due to health problems which he described. He added that he "*would have had a counsel or representative attend if I had been given enough time to respond*". Our registrar advised him to attend and sought a medical certificate, which has not yet been produced.

[5] By this time the Tribunal had assembled at Auckland for the penalty hearing, and Mr Clancy was also in attendance for the prosecuting Authority. Accordingly, we decided to (and did) hear the evidence-in-chief of Ms Polares and have that transcribed and provided to the defendant (and his lawyer if one is instructed), and then convene a further teleconference to fix a new date to complete the penalty hearing. We also contemplated hearing the evidence-in-chief of Mr Dalangin but he did not attend as counsel had expected. Ms Polares will be available for cross-examination in due course. We have now heard the submissions of Mr Clancy for the Authority.

[6] The record of 20 September 2012 is being typed for providing to the parties; and the registrar will soon arrange a teleconference at which we shall order a further timetable.

[7] On 20 September 2012 we also made it clear that if the defendant does not appear on the next fixture date or if he is uncooperative in the meantime, we shall proceed to sentence which will also involve compensation orders.

Orders

[8] We order that the defendant, or any lawyer he may be instructing, file the defendant's submissions on penalty within three calendar weeks from 20 September 2012. Mr Clancy is entitled to make final submissions arising out of those of the defendant if he wishes within a further seven working days.

[9] The registrar is to arrange a further directions conference one week before the new sentencing date and if, in our view, the defendant is not then participating cooperatively, we shall sentence in his absence – possibly on the papers.

Judge P F Barber
Chairperson

Ms J Robson
Member

Mr J Gaukrodger
Member