

Decision No: [2012] NZREADT 62

Reference No: READT 014/12

IN THE MATTER OF

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

BETWEEN

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

Complainant

AND

SANT RAJ

Defendant

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

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

APPEARANCES

Mr Clancy for the Real Estate Agents Authority (10063)
Mr Barron-Afeaki for the Defendant

HEARD at AUCKLAND on 20 September 2012

PENALTY DECISION

Introduction

[1] The Tribunal issued its decision on this case following a hearing on 30 July 2012. The Tribunal then called for submissions on penalty.

[2] As recorded in our decision of 31 July 2012 Mr Sant Raj is no longer practicing as a real estate agent and therefore many of the penalties available to the Tribunal are not available. However we note that had Mr Raj still been an agent we would have considered seriously suspending or removing his licence as the appropriate penalty for this charge. However we cannot impose such a penalty. The Tribunal may censure Mr Raj and may fine him up to \$15,000.

[3] Mr Barron-Afeaki on behalf of Mr Raj made comprehensive submissions but many of them related to the matters which could and should have been raised in his defence at the substantive hearing on 31 July. Mr Raj continues to maintain that he was not involved in any of the transactions and he was never aware of the actions of his son Rajneel Raj (and wife). He submitted that the evidence before the Tribunal as to his driver's licence details being recorded on the back of a cheque was inconclusive and that there was no security video footage available to prove that he made the withdrawals. He also submitted that Mr Sant Raj's wife kept one or two signed cheques in her possession in case she needed to use them for bills while he was absent. He therefore submitted that it was likely that his ex-wife had organised a money withdrawal on 25 June 2010. Mr Raj denied he had received any pecuniary advantage for this matter. Mr Barron-Afeaki also submitted that there had been a significant penalty in the fact that Mr Raj had allowed his licence to lapse and not applied to renew that. He submitted that this self termination was a substantial penalty. He submitted that a fine was not appropriate and that the long term and ongoing financial effects of the self termination were ample penalty for Mr Raj.

[4] In contrast the Complaints Assessment Committee submitted that Mr Raj had had ample opportunity to make these submissions at the substantive hearing and chose not to do so and submitted that could not now be considered by the Tribunal. The Complaints Assessment Committee urged the Tribunal to impose a fine under s 110(f) and censure Mr Raj. The Complaints Assessment Committee submitted that an order under s 110(2)(e) that Mr Raj cannot be employed again as an agent would be appropriate.

[5] The Tribunal has considered carefully the facts of this case and the submissions of counsel. It does not consider any of the material relating to the commission (or otherwise) of the offence. It has considered the submissions on penalty. Mr Barron-Afeaki submitted that Mr Raj had no monies but no affidavit of assets and liabilities have been presented to us. The evidence shows that at least \$30,000 in cash was unaccounted for at the end of the transaction. While the evidence did not establish conclusively that Mr Raj still has this money there is no doubt that money was made by someone in relation to this transaction. It is appropriate therefore that a fine be imposed on Mr Raj. We consider that \$5,000 fine is appropriate in the context of this serious case. We also consider that it is appropriate to make an order under s 110(2)(b) that no real estate employer may engage Mr Raj in connection with real estate agency work again.

[6] The Tribunal has also considered the purpose and effect of imposition of a penalty under the Real Estate Agents Act (as set out in *CAC v Walker* [2011] NZREADT 4. From the facts of this case the Tribunal considers that the following penalties are appropriate:

1. Mr Raj is censured.
2. The Tribunal imposes a fine of \$5,000 upon Mr Raj.

3. The Tribunal makes an order under s 110(2)(b) prohibiting any agency from employing Mr Raj as an agent or employee.

[7] The Tribunal draws the parties' attention to s 116 of the Real Estate Agents Act 2008.

DATED at WELLINGTON this 12th day of October 2012

Ms K Davenport
Chairperson

Mr G Denley
Member

Ms J Robson
Member