

Decision No: [2012] NZREADT 64

Reference No: READT 016/12

**IN THE MATTER OF** an appeal under s.111 of the Real Estate Agents Act 2008

**BETWEEN** **GRANT TUCKER**

Appellant

**AND** **REAL ESTATE AGENTS  
AUTHORITY (CAC 2006)**

First Respondent

**AND** **GLENICE CLAYDON**

Second Respondent

**BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

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

**PENALTY DECISION**

***Introduction***

[1] In its decision dated 3 August 2012 the Tribunal reversed the finding of the Complaints Assessment Committee against Glenice Joan Claydon and substituted its finding that her conduct amounted to unsatisfactory conduct.

[2] The Tribunal invited penalty submissions from the parties. The Tribunal has the power under s 93 of the Real Estate Agents Act to make the penalty orders the Complaints Assessment Committee have made. The Tribunal's role in imposing a penalty has been set out in *CAC v Walker* [2011] NZREADT 4.

[3] The READT submitted that the Tribunal should consider in sentencing a decision of *CAC v Hume* (6 December 2011) which was on appeal. In this case the agent had facilitated a sale through his agency notwithstanding in his knowledge that the relevant purchaser had been introduced to the property by a salesperson from the first agency. The CAC found that there was a failure to explain the potential liability for commission, and Mr Hume was reprimanded and ordered to pay a fine of \$3,000. The REAA submitted that when there has been failure to comply with the rules the Tribunal should impose a penalty which brings home to the licensee the importance of the rules, sends a clear message to the industry as to the expected standards and acts as a deterrent. The Real Estate Agents Authority concluded by submitting that a financial penalty similar to that ordered in *Hume* along with an order for censure was appropriate.

[4] Mr Waymouth for Ms Claydon submitted that the Tribunal should take into account the following matters in considering the appropriate penalty. He submitted that:

(i) **Complaint**

There was no complaint from the client or customer (vendor or purchaser).

(ii) **The Complaints Assessment Committee's role**

The Complaints Assessment Committee had conducted a full enquiry and concluded on the evidence that there was no breach of Rule 9.11.

This appeared to be a comment on the Tribunal's decision rather than a submission on penalty.

(iii) **Financial loss**

There was no financial loss to the vendor or to Grant Tucker.

(iv) **Financial Loss by the agent**

However Mr Waymouth submitted that the agent suffered financial loss in terms of marketing costs, legal fees and the Tribunal should take this into account in determining the financial penalty to be imposed.

(v) **Compliance with the requirements of the Rules**

Mr Waymouth submitted that Ms Claydon correctly completed all necessary documentation in respect of the Listing Authority Rules and required disclosure. Mr Waymouth submitted that the Committee (which we take to mean the Tribunal) should take into account the fact that Ms Claydon demonstrated correct procedures and prowess (sic).

(vi) **Ms Claydon's view**

Mr Waymouth submitted that the Tribunal should take into account the fact that Glenice Claydon objectively and reasonably believed that she had fully and completely discharged her obligations under the Real Estate Agents Act 2008. He submitted that there was no serious departure by Ms Claydon from the accepted standards under s 72.

(vii) **No previous appearance**

Mr Waymouth submitted that Ms Claydon previously had not appeared before the Tribunal. Mr Waymouth submitted that this was not a similar case to *CAC v Hume* and there was no need for a penalty to be imposed as a warning or deterrent to the industry

He submitted that Ms Claydon's financial position could not support the imposition of large fine and offered to file further submissions on this point. He finally submitted that censure would be unnecessary and an apology was not necessary as there had been no complaint by the vendor. He submitted that the appropriate penalty imposed should be a determinative practice note and otherwise no penalty.

- (viii) Mr Waymouth submitted that the attitude of the Complaints Assessment Committee was contumelious and wanting "*and he now makes the strongest possible criticism of the same*". He submitted that there was no breach found by the Complaints Assessment Committee and the Complaints Assessment

Committee (REAA) should therefore have as a matter of policy adopted a neutral position on penalty.

[5] The appellant submitted that the disparaging comments concerning the appellant and the attempt by Ms Claydon to relitigate the decision of the Tribunal were not helpful. His counsel submitted that he wished to make no other submission on penalty.

[6] Having considered this matter carefully the Tribunal considers that care needs to be taken by agents when dealing with vendors who have recently been subject to a sole agency with another agency. Ms Claydon did not choose to give evidence to challenge the evidence that she gave to the Complaints Assessment Committee and the Tribunal was bound by that evidence. The Tribunal consider that breaches of the Rules need to be treated seriously to ensure industry standards are maintained and public confidence in the industry is upheld. The Tribunal have considered Mr Waymouth's submissions insofar as they do not relitigate the Tribunal's decision. Accordingly the Tribunal determined that the appropriate way of dealing with this matter is:

- A. To censure Ms Claydon.
- B. To fine her the sum of \$500.

This sum is reflective of the fact that the breach was at the more minor end of the scale and no double commission was paid and that Ms Claydon has limited means.

[7] The Tribunal draws the parties' attention to the appeal provisions of s 116.

**DATED** at AUCKLAND this 25<sup>th</sup> day of October 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