

**BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

[2013] NZREADT 107

Reference No: READT 044/13

**IN THE MATTER OF**

of an application under s 112 of the  
Real Estate Agents Act 2008 by

**ABDUL ZAHEED**

Applicant

**AND**

**REGISTRAR OF THE REAL  
ESTATE AGENTS AUTHORITY**

Respondent

**MEMBERS OF TRIBUNAL**

Ms K Davenport QC	-	Chairman
Mr J Gaukrodger	-	Member
Ms N Dangen	-	Member

**COUNSEL**

Mr P MacDonald, solicitor for the Real Estate Agents Authority  
Mr S Sharma for Mr Zaheed

**HEARD** at Auckland on 18 November 2013

***Introduction***

[1] Mr Zaheed applied to the Registrar of the Real Estate Agents Authority for a salesperson's licence. He applied on 9 May 2013. On 31 July 2013 the Real Estate Agents Authority declined Mr Zaheed's application. The basis on which the application was declined was that pursuant to s 36(2)(c) Mr Zaheed was not a fit and proper person to be licensed as a salesperson because in 2010 he was convicted of a number of offences relating to tax evasion and was sentenced to a period of home detention. Mr Zaheed appeals that decision. Mr Zaheed's application was supported by a reference from Mushtaq Sheikh, a real estate agent with Barfoot and Thompson, Otahuhu at the time of the application and now with

Harcourts, Manukau. Mr Sheikh said that he would support his application and he would be hardworking and willing to learn. He also said that he is 'good mannered', of 'good character' and would be a 'good agent'.

[2] Mr Zaheed's criminal record shows that in November 2010 he was convicted of fifteen charges of evading/attempts to evade assessment or payment of tax. He was initially sentenced to a period of imprisonment on appeal to the Court of Appeal this was reduced to a sentence of six months' home detention. (Note: we only have pages 1 and 3 of his Criminal Convictions Report not page 2).

[3] Although we do not have the District Court sentencing notes we do have the Court of Appeal judgment in which he appealed from the sentence of 19 months' imprisonment.

[4] Mr Zaheed also advised the Tribunal that when the issues with the Inland Revenue Department had first arisen in May 2009 he contacted a Mr Deobhakta. It seems that Mr Deobhakta did not act appropriately for Mr Zaheed and is now the subject of a prosecution by the NZLS. At Mr Deobhakta's suggestion Mr Zaheed arranged a bank cheque payable to the Inland Revenue Department in September 2009 for \$25,000. This bank cheque was subsequently changed after a meeting with the Inland Revenue Department on 18 November 2009 to a \$21,000 bank cheque to the Inland Revenue Department and \$4,000 in cash which he paid to Mr Deobhakta. Subsequently Mr Deobhakta tried to get the bank cheque changed to make it payable to himself.

[5] Mr Deobhakta did not succeed. The Inland Revenue Department laid charges in December 2009. Mr Zaheed changed solicitor and pleaded guilty to the charge.

[6] Mr Zaheed told the Tribunal that had Mr Deobhakta done his job properly it may have been possible to have negotiated the issues with the Inland Revenue Department and not have been charged. The Tribunal can see that he may not have been well served by Mr Deobhakta but he pleaded guilty to the charge.

[7] The issue for the Tribunal today is whether or not in the circumstances and after having heard the evidence of Mr Zaheed, the Tribunal should set aside the decisions of the Registrar and substitute his own decision to give him a certificate of good character.

[8] Mr Sharma submits that the decisions of the Tribunal in *Revill v the Registrar of the Real Estate Agents Authority*<sup>1</sup> and *L v the Registrar of the Real Estate Agents Authority*<sup>2</sup> show that the applicant must satisfy the Tribunal that he is a fit and proper person to hold a licence, each case is fact specific and the onus to establish his own character is on the applicant. In *Re T*<sup>3</sup> the Court outlined four features relevant to our determination of good character:

- (a) The focus is necessarily forward looking. The function of the Court is not to punish the applicant for past conduct. Rather the issue is worthiness and reliability for the future.

---

<sup>1</sup> [2011] NZREADT 41

<sup>2</sup> [2013] NZREADT 47

<sup>3</sup> [2005] NZLR 544

- (b) The onus on a person who has erred in a professional sense following admission to the profession is heavier than that on a candidate for admission.
- (c) Due recognition must be given to the circumstances of youth where errors of conduct occurred where the applicant was immature.
- (d) It is important to look at the facts of the case in the round and not just have regard to the fact of a previous conviction or convictions.

[9] Mr Sharma submits that:

- Mr Zaheed does not have any convictions in relation to dealing with customers or private consumers and has acknowledged his wrongdoing done.
- He does not accept that the issues that have arisen were accurately reflected in the nature of the charges against him.
- Mr Zaheed has been punished twice for the same offending.
- The offending is now over four years old.
- There is no risk to the general public.
- Mr Zaheed has acknowledged his wrongdoing and pleaded guilty.
- Mr Zaheed does not have any adverse character issues.
- He urged upon the Tribunal that Mr Zaheed should be given a licence.
- Mr MacDonald also submits there is no new significant material put forward.
- The offending is serious, it reflects directly on the qualities of character.
- The offending is reasonably recent.
- The applicant's contribution to Muslim community affairs is acknowledged but does not tip the scales (in favour of granting the appeal).
- There is no distinction between offending in respect of revenue and offending in respect of consumers. It is integrity of the applicant which is wanting and not paying the taxes.

### ***Discussion***

[10] The Tribunal are mindful of the comments of the Court in *Re T*. The difficulty for the Tribunal in this case is that Mr Zaheed does not seem to have freely acknowledged his offending or made an effort to convince the Tribunal of the

reasons for that offending and the fact that he has put these behind him. Considerable time in his oral evidence was devoted to things that Mr Deobhakta had done, and little to any insight of his own conduct.

[11] The Tribunal asked him why he should be an agent and the reasons that he gave were:

- (i) He had no other source of income.
- (ii) He had no qualifications.
- (iii) That Mr Sheikh was willing to give him a chance.

[12] When asked why he would be a good agent he said:

- (a) He was good with people.
- (b) He always got on with people.
- (c) He liked to make a difference.
- (d) As President of the local regional Muslim Association he had experience, he always maintained the books, he believes he could handle pressure and do well in real estate.

[13] Mr Sheikh did not accompany him, nor did he provide any documentary evidence which showed that he would assist or support Mr Zaheed as an agent (other than the initial application). The Tribunal are much more able to see that a person can practice properly as an agent if there is somebody experienced in real estate who is prepared to support and encourage and mentor the person. Mr Zaheed does not have that person.

[14] After having heard Mr Zaheed and weighed the evidence the Tribunal were not convinced that the Registrar's decision was wrong. Mr Zaheed has not discharged that onus on him. The reasons are:

- (i) That he has not shown us that he understands fully and accepts responsibility for the offending. He lacks insight into the fact that his offending was wrong and injurious to his staff and New Zealand as a whole. The Tribunal has no evidence to confirm that payment of reparation has been completed.
- (ii) He has no proper future plan.
- (iii) Real estate seems as if it is somewhat of a last resort.
- (iv) He does not appear to be supported properly by Mr Sheikh. When we raised this issue with him he said Mr Sheikh would be happy to provide something to the Tribunal if asked but was too busy to come to the Tribunal.
- (v) We are therefore not convinced that he is of good character such that he should hold a salesperson's licence.

[15] For these reasons we consider that the Registrar was correct to find that Mr Zaheed was not a fit and proper person to hold a real estate agents licence and decline the appeal.

[16] The Tribunal draw the parties to the attention of s 116 of the Real Estate Agents Act.

**DATED** at AUCKLAND this 6th day of December 2013

---

Ms K G Davenport QC  
Chairperson

---

Mr J Gaukrodger  
Member

---

N Dangen  
Member