

BEFORE THE REAL ESTATE AGENTS
DISCIPLINARY TRIBUNAL

Decision No: [2013] NZREADT 17

Reference No: READT 037/11 &
044/11

IN THE MATTER OF of a charge laid under s.91 of the Real
Estate Agents Act 2008

BETWEEN **REAL ESTATE AGENTS
AUTHORITY (CAC 10003)**

AND **DELAWER HOOSAIN KUMANDAN**

Defendant

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

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

Hearing: On the papers

**DECISION AS TO INTERIM SUSPENSION
PURSUANT TO S 115 REAL ESTATE AGENTS ACT**

[1] On the 5 April 2012 the Tribunal found Mr Kumandan guilty of misconduct and in a decision dated 12 June 2012 cancelled his licence.

[2] Mr Kumandan appealed to the High Court. In a decision dated 19 December 2012 the High Court upheld the Tribunal's finding of misconduct upheld the appeal on penalty. The Court remitted the penalty decision back to the Tribunal to consider the penalty afresh.

[3] The CAC applies for an interim suspension of Mr Kumandan's licence pending the outcome of the rehearing of the penalty.

[4] The grounds on which they make this application under s 115 of the Act are:

"2.2 It is submitted that suspension is clearly necessary or desirable, having regard to the interests of the public, under s 115(1)(b).

2.3 *In its original penalty decision, the Tribunal noted:*

[15] a finding of forgery is a serious matter for an agent ... honesty is a prerequisite for any real estate salesperson. This is clearly an offence at the highest end of the scale.

...

[19] ... Forging documents for the purposes of showing that a sale has taken place when it has not, is a serious matter. In other professions such as law and medicine it would almost inevitably be met with cancellation of the practitioner's registration. We think that similar concerns will be found in the real estate industry. Those who are dishonest have no place to be acting as agents in transactions involving large sums of money.

2.4 *The matters noted by the Tribunal will be highly relevant to consideration of the character test under the 1976 Act. The Tribunal's underlying finding that Mr Kumandan was responsible for forging a solicitor's signature on at least one settlement form – purporting to confirm that a property transaction had settled when it had not – was upheld on appeal.”*

[5] The Tribunal has powers under s 115 of the Real Estate Agents Act to consider the question of interim suspension. The grounds on which it can consider the application are:

- [a] If the licensee has been charged under s 91; and
- [b] The Tribunal considers it is necessary or desirable to suspend the licence having regard to the interests of the public.

[6] The Tribunal have considered the material put before it by the CAC. The Tribunal are not satisfied that this section necessarily applies when a licensee has been found guilty of a charge but not sentenced as the section is also headed “suspension pending outcome of the hearing”. The Tribunal has also considered whether in order to protect the public until a full determination of the application of the question of Mr Kumandan's character it should make an interim order pursuant to s 98 of the Real Estate Agents Act 1976. However, the Tribunal does not consider that given s 172, it can still make orders under this Act. Further the penalty provisions of the Real Estate Agents Act make no provision for interim orders of suspension pending penalty hearings. In the absence of detailed submissions on these points the Tribunal declines the application for interim suspension but orders that there be a short timetable for the filing of penalty/submissions.

[7] The timetable orders are:

- [a] The REAA's submission on penalty, including character, is to be filed by 7 March 2013.
- [b] Mr Kumandan's submissions in response, including character, are to be filed by 21 March 2013.

[c] The REAA may make submissions in response by 28 March 2013.

DATED at Auckland this 21st day of February 2013

Ms K Davenport
Chairperson

J Gaukrodger
Member

G Denley
Member