

Decision No: [2013] NZREADT 21

Reference No: READT 015/12

IN THE MATTER OF

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

BETWEEN

**REAL ESTATE AGENTS AUTHORITY
(CAC 10064)**

Prosecutor

AND

RAM VINODH

Licensed Salesperson

Defendant

AND

Reference No: READT 021/12

IN THE MATTER OF

an appeal under s.111 of the Real Estate Agents Act 2008

BETWEEN

RAM VINODH

Appellant

AND

**REAL ESTATE AGENTS AUTHORITY
(CAC 10064)**

First respondent

AND

MICHAEL HAWES

Second respondent

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

MEMBERS OF TRIBUNAL

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

HEARD on the papers

Counsel

Mr L Clancy – Counsel for the Real Estate Agents Authority
 Mr P Moodley – Counsel for Mr Vinodh

DECISION OF THE TRIBUNAL ON PENALTY

[1] The Tribunal have read the submissions of the Real Estate Agents Authority (REAA) and counsel for Mr Vinodh as to the appropriate penalty to be imposed after the Tribunal's decision dated 7th December 2011. In this decision Mr Vinodh was found guilty of unsatisfactory conduct.

[2] The principles of sentencing are:

A penalty must fulfil the following functions. They are:

a) *Protecting the public*

Section 3 of the Real Estate Agents Act provides that this is one of the purposes of the Act.

b) *Maintenance of professional standards*

This was emphasised in Taylor v The General Medical Council¹ and Dentice v The Valuers Registration Board².

c) *Punishment*

While most cases stress that a penalty in a professional discipline case is about the maintenance of standards and protection of the public there is also an element of punishment – such as in the imposition of a fine or censure. See for example the discussion by Dowsett J in Clyne v NSW Bar Association³ and Lang J in Patel v Complaints Assessment Committee⁴.

d) *Where appropriate, rehabilitation of the agent must be considered – see B v B⁵.*

[3] The Tribunal has open to it the penalty powers available under s 93 of the Act. Counsel for the Real Estate Agents Authority have submitted that the penalty imposed:

“Must promote accountability and should include a deterrent element by way of a financial penalty.”

[4] The REAA also submitted:

¹ [1990] 2 All ER 263

² [1992] 1 NZLR 720

³ (1960) 104 CLR 186 at 201-202

⁴ HC Auckland CIV 2007-404-1818; Lang J; 13/8/07

⁵ HC Auckland, HC 4/92 6/4/93; [1993] BCL 1093

“In all the circumstances, the Tribunal may feel that a combination of the following orders would be appropriate:

- [a] Censure or reprimand;*
- [b] An order that the Defendant undergo training or education, namely completion of an appropriate English language qualification such as the Unitec Certificate in Intensive English (Upper Intermediate).*
- [c] A fine in the range \$2,000 to \$4,000.”*

[5] In response, Mr Vinodh’s solicitors have urged the Tribunal to impose censure or reprimand upon Mr Vinodh; and to order him to apologise to the complainant. They submit that no further penalty is needed and refer to the decision of CAC20005 – complaint against Anja Gordon. They submitted that this is a similar case where the agent made an inadvertent error. The CAC in that case did not impose a fine but she was ordered to pay compensation of \$315.00.

[6] Mr Vinodh’s solicitors submitted that he has sufficient English competence having passed a Real Estate Agents salesperson’s certificate course at Unitec which would have deemed him competent in English. They submitted that his English competency did not hinder his ability to work as an agent.

Tribunal’s Decision

[7] The Tribunal have considered the submissions carefully and impose the following penalty on Mr Vinodh:

- [a] Mr Vinodh is censured pursuant to s 93(1)(a);
- [b] Mr Vinodh is ordered to apologise to the complainant under s 93(1)(c);
- [c] Mr Vinodh is ordered to undertake training education by way of completion of an appropriate English language certificate such as a Unitec Certificate in Intensive English Upper Intermediate or such other course as the REAA in its sole discretion deems appropriate.
- [d] Mr Vinodh is fined the sum of \$2,500.00.

Reasons

[8] The censure reflects the displeasure of the Tribunal at the conviction against Mr Vinodh. The Tribunal consider he should apologise to the complainant for the stress he suffered over the discovery that the number of his house was not correctly shown on the agreement.

[9] The Tribunal considers that Mr Vinodh’s English language skills are such that he did not feel comfortable enough to speak to the Tribunal in English. Therefore in order to ensure ourselves that he does have the skills to carry out his job as a real estate agent practising in New Zealand, he should undertake a course in English. This is a matter of safety for the public. If he is sufficiently proficient in English, this should pose no difficulty for him.

[10] The Tribunal imposes a fine in the sum of \$2,500 which we believe is a sufficient deterrent and penalty for Mr Vinodh in all the circumstances of the case.

[11] The Tribunal draw the parties' attention the right of appeal to the High Court contained in s.116 of the Real Estate Agents Act 2008.

DATED at AUCKLAND this 11th day of March 2013

Ms K Davenport
Chairperson

Mr J Gaukrodger
Member

Mr G Denley
Member