

Decision No: [2013] NZREADT 25

Reference No: READT 041/12

IN THE MATTER OF

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

BETWEEN

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

Prosecutor

AND

JOANNE PICKNELL

Defendant

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

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

APPEARANCES

Mr R McCoubrey for the Real Estate Agents Authority
Mr G Collecutt for Ms Picknell, Instructed by Simpson Dowsett Mackie, Auckland

HEARD at AUCKLAND on 12 February 2013

Introduction

[1] Joanne Picknell is a real estate agent who practises on a very part time basis in South Auckland. In 2011 the BNZ commenced an investigation into allegations that a fraudulent mortgage scheme was being run in South Auckland. As a result of their enquiries it was noted that a number of the Sale and Purchase Agreements used to support the finance applications prepared by a Ms Vicky Letele had Ms Picknell's J P Realty Limited stamp on the Agreement. BNZ notified the Real Estate Agents Authority who conducted an enquiry and interviewed Ms Picknell and determined to lay two charges against Ms Picknell. The charges are:

"Complaints Assessment Committee 10063 (Committee) charges the defendant with misconduct under s 73A of the Real Estate Agents Act 2008 (Act) and that her conduct would reasonably be regarded by agents of good standing or reasonable members of the public as disgraceful".

Particulars

1. *The defendant provided blank Agreements for Sale and Purchase and a real estate stamp with the details of the defendant's company J P Realty Limited to Vicky Letel.*

Charge 2

The Committee further charges the defendant of misconduct under s 73(c)(iii) of the Act in that her conduct consists of wilful or reckless contravention of Rule 7.4 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009.

Particulars

In the period February 2011 to 10 August 2011 having learned that Vicky Letele was undertaking real estate agency work without a licence, the defendant failed to immediately report the matter to the Real Estate Agents Authority.

[2] In her notice of response to charge Ms Picknell said that she admitted providing Vicky Letele with a blank agreement stamped with the details of J P Realty Limited but denied that it was disgraceful conduct.

[3] In her defence she said that this was because blank Agreements for Sale and Purchase are freely available to the public, it was common practice for agents' details to be handwritten or typed into agreements, and a stamp with an agent's name and details could be readily obtained by the public. Further she believed that Vicky Letele was going to bring the relevant potential purchasers to her prior to them completing the agreements and she would be involved in finalising, checking and completing the relevant sales. In defence she also said that she denied being aware that Vicky Letele was doing real estate agency work under the Act.

[4] The issues for the Tribunal are therefore:

1. Ms Picknell admits supplying the Agreements. Was it misconduct for her to do so?
2. Did Ms Picknell know Ms Letele was carrying out real estate agency work? Was it misconduct not to report it?

[5] Evidence was given for the Complaints Assessment Committee by Marie Leota. In 2011 Ms Leota was employed by Vicky Letele as her Personal Assistant. She told the Tribunal that she had met Jo Picknell during the course of her work with Vicky Letele. She (Vicky) described the work as facilitating families to get into homes. She told the Tribunal that she saw blank Sale and Purchase Agreements with Joanne Picknell's real estate agent's stamp in the office and that Vicky had also copied them. She put them in a manila envelope labelled Sale and Purchase Agreements. Ms Leota said that Jo Picknell would come into the office every few weeks and help complete Agreements for Sale and Purchase but that when she began her job Sale and Purchase Agreements were completed by Vicky Letele or the Consultants without 'Jo' knowing on the blank Agreements for Sale and Purchase by Jo. Ms Leota was aware that Jo Picknell charged Vicky a fee of approximately \$500 for consultancy work as she would be sent the invoices and would re-e-mail them to Vicky Letele. She told the Tribunal that in February/March 2011 she copied about 10 agreements with Ms Picknell's stamp on them and posted them to Ms Picknell. She said that by September 2011 she began to question that

was going on in the office, including the fact that she had not been paid for seven months. She then left the organisation.

[6] The Authority also called Elizabeth Hope, a senior investigator at the Real Estate Agents Authority. She took over the investigation from Ross Gouverneur. Ms Hope told the Tribunal that in a signed statement made after her interview by Ross Gouverneur Ms Picknell acknowledged that she had left *“two to three blank Agreements for Sale and Purchase”* with Vicky Letele. In her interview Ms Picknell acknowledged that the Agreements for Sale and Purchase that she was shown (for properties at 160 Polo Prince Drive, Alfriston; 76 Browns Road, Manuwera; 36 Innismere Avenue, Wattle Downs; 21 Bettina Road, Manuwera and 21 Viva Place, Weymouth) were agreements which were prepared on Sale and Purchase Agreements marked with her stamp but she had not met the clients or prepared the agreements. She said that she had done rental assessments for the properties. She said that she had sent invoices to Ms Letele for \$565 for consultancy fees on these properties. Ms Picknell said that she left the blank forms with Ms Letele believing that she would call her back in to complete them when the purchase was to be completed.

[7] After her interview on 10 August Ms Picknell wrote to Mr Gouverneur on 20 August and explained that her main focus had been in a charitable project based in Samoa and that she was a director and founder of Homes for Families Charitable Trust which helped families get into homes. She said that she believed that Ms Letele was running a similar programme to Homes for Families. She again acknowledged leaving two or three blank agreements with ‘Vicky’ against a background that she was to meet the clients and finalise the Sale and Purchase Agreement. She said that she was not aware that her agreements had been used without her knowledge ‘until a few months ago’. In this letter she said she had also been involved with two transactions with Ms Letele in 2011 where Ms Letele was the purchaser or had facilitated an agreement where Ms Letele’s company or Ms Letele’s father was the purchaser.

[8] Ms Picknell also told the investigator that she had sent invoices to Ms Letele for both rental appraisals – these invoices were for \$65 each – and further invoices for \$565. In her interview on 18 October Ms Picknell told Mr Gouverneur that once she became aware in 2011 that the BNZ had begun an investigation into five properties which were sold on her forms then she started invoicing Ms Letele for consultancy fees. Ms Picknell said that she had not been paid for these fees and while the invoices were dated 2010 in reality they were not sent out until 2011.

[9] In December 2011 Mr Collecutt wrote to the Real Estate Agents Authority denying that Ms Picknell had been aware that Vicky Letele was committing an offence by undertaking real estate agents’ work. He said Ms Picknell was not involved in mortgage fraud and that there was no disgraceful conduct. He said that all that Ms Picknell had done was issue various invoices after the relevant transactions had occurred as a result of Vicky Letele’s belated advice that she had *“sold various properties using my client’s documentation. They were swayed by Vicky Letele”*.

[10] Ms Letele was charged in the District Court with practising as an unlicensed real estate agent and was sentenced. The Tribunal did not have before it details of her sentence but did have a copy of Judge Blackie’s sentencing notes.

Ms Picknell's Case

[11] When Ms Picknell gave evidence she acknowledged that she was aware that Ms Letele had been working as a real estate agent once she saw the forms that she had completed in 2011. She told the Tribunal that she left the forms with her in September 2010 for an agreement to be completed but did not follow this up. In February 2011 she became aware that there were a number of agreements prepared using her stamp. She acknowledged that she knew that Vicky was acting as a real estate agent when she saw the forms in February 2011, and acknowledged that she did not immediately inform the Authority that Ms Letele was acting as an unlicensed real estate agent.

[12] In her written evidence and her interviews with the Real Estate Agents Authority Ms Picknell had said that she had created and sent invoices to Ms Letele for these agreements but in her oral evidence she said that she had never sent the invoices. The various occasions on which she had acknowledged sending the invoices were put to her. She said that she had been fearful of Mr Gouveneur when she made the first statement and that she now wished to tell the truth. The truth was she said that the statements had not been sent out. Ms Picknell could not remember receiving the agreements Ms Leota posted but acknowledged under cross-examination that she probably had received them. She said that blank Agreements for Sale and Purchase were freely available to any member of the public to purchase from the Auckland District Law Society. She also said that anyone could obtain a stamp from the Warehouse with the name of a company and stamp this on a form, so that leaving a blank agreement was not a serious breach of her obligations as a real estate agent especially when she thought she was going to complete the agreements.

The Issues

[13] As set out above the issues are:

1. Was the admitted provision of blank Agreements for Sale and Purchase to Vicky Letele conduct that would be regarded by agents of good standing or reasonable members of the public as disgraceful?
2. Was Ms Picknell aware that Ms Letele was practicing as a real estate agent without a licence and was her conduct in contravention of Rule 5.4 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009?

Discussion

[14] Having heard the evidence of Ms Leota and Ms Picknell, the two people who were actually present during some of the events in question, we find Ms Leota's evidence to be preferred. She was straightforward and open with the Tribunal and made admissions where appropriate to Ms Picknell on the other hand was evasive and gave evidence that she had lied in all her previous statements. Further she acknowledged under cross-examination that she had been aware that Vicky Letele was practising as an unlicensed real estate agent but took no steps to do anything about it. Her lawyer advanced an argument that because she had provided the Authority with a copy of the agreements that led to Ms Letele's prosecution that Ms Picknell had in fact complied with her obligations. Since these documents were

provided by her during the course of investigation and not willingly this did not seem to be any form of defence and she abandoned that argument.

[15] The test of whether the conduct of an agent is disgraceful or not has been succinctly set out by the Tribunal in the well known case of *Downtown Apartments v the CAC*, [2010] NZ READT 06 at paragraphs 55 to 59.

“The word disgraceful is in no sense a term of art. In accordance with the usual rules it’s been given its natural and popular meaning in the ordinary sense of the word. But s 73(a) qualified the ordinary meaning by reference to the reasonable regard of ‘agents of good standing’ or ‘reasonable members of the public’. Thus the test is an objective one against which the Tribunal must assess the standards an agent of good standing would have and judge them against the behaviour of the agent.”

Conclusion

- (i) The defendant provided blank Agreements for Sale and Purchase of real estate stamped with her company to Vicky Letele (she acknowledged this).
- (ii) This conduct is disgraceful conduct. An agency stamp on an agreement conveys to a purchaser the view that an agent has overseen the contract. They also have the assurance of knowing that the agent is trained and qualified in accordance with the standards of the Real Estate Agents Act 2008. Every case is fact specific but in this case Ms Picknell provided blank agreements and was reckless to the point of indifference about where they were, when they used and how they were used. This does amount to disgraceful conduct. The best we can say of Ms Picknell is that she was wilfully blind to the use to which the agreements would be put and the worst is that she was complicit with Ms Letele. Further support comes from Ms Picknell’s actions after she discovered that the agreements had been used. Instead of immediately advising the Real Estate Agents Authority Ms Picknell issued and sent (as we find she did) invoices to Ms Letele as a “consultancy fee for the use of her agreements”. In doing this she recognised that what had been done was wrong and was indifferent to it but hoped to benefit financially. While this conduct is after the event, it does inform and colour our view of her intentions in leaving the agreements with Ms Letele. We therefore find that Charge 1 has been established on the balance of probabilities.
- (iii) Charge 2 is admitted by Ms Picknell. The evidence relating to the invoices again supports the wilful and/or reckless contravention of the Rules. Aware that Ms Letele was not an agent but was acting as one Ms Letele simply sent out invoices and did not take steps to advise the Real Estate Agents Authority.

[16] The Tribunal therefore find that Charge 2 has been established on the balance of probabilities.

[17] Having found that both charges have been established on the balance of probabilities the Tribunal now invite submissions on penalties in accordance with the following timetable:

- The Real Estate Agents Authority is to submit their submissions on penalty within 21 days of the date of this decision.
- Ms Picknell's counsel is to file submissions in response within a further 21 days.
- Any response from the Real Estate Agents Authority (strictly in reply) is to be filed within a further five days of receiving submissions from counsel for the defendant.

DATED at WELLINGTON this 20th day of March 2013

Ms K Davenport
Chairperson

Mr J Gaukrodger
Member

Mr G Denley
Member