

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2013] NZREADT 34

READT 036/12

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

BETWEEN **CHRISTOPHER BAYLEY**

Appellant

AND **REAL ESTATE AGENTS
AUTHORITY (CAC10072)**

First respondent

AND **JOHN McMILLAN**

Second respondent

MEMBERS OF TRIBUNAL

Judge P F Barber - Chairperson
Mr J Gaukrodger - Member
Mr G Denley - Member

HEARD at AUCKLAND on 23 April 2013

DATE OF DECISION 3 May 2013

COUNSEL

Mr R J Latton and Ms A Hellaby for appellant/licensee
Mr M R Walker for the Authority
The second respondent/complainant on his own behalf

DECISION OF THE TRIBUNAL

The Issue

[1] We explain below that the appellant, Mr C Bayley, succeeds in this appeal against a Committee of the Authority having found him guilty of unsatisfactory conduct.

[2] Essentially, this case arose because in August 2008 a salesperson at the Manukau office of Bayleys Real Estate Ltd, in error, had parties to an agreement for sale and purchase of a Pakuranga commercial property sign it on the basis of the

price being GST inclusive rather than plus GST, if any. The form of agreement provided both those options but stated that if neither was deleted then the purchase price “*includes GST (if any)*”. Neither option was deleted. Accordingly, the agreement did not reflect what the parties had agreed and included in previous drafts of the agreement, namely, that the price was plus GST; but the purchaser sought to take advantage of that error.

[3] The appellant was general manager of Bayleys at South Auckland at material times and had given the appellant some marketing advice related to the property sale. The second respondent had alleged unsatisfactory conduct by the appellant on the basis of his alleged advice which the evidence before us showed was not given.

[4] On 23 April 2013 we heard all the evidence in this appeal. We had previously had the benefit of full and reasoned typed submissions from counsel for the appellant and counsel for the Authority. At that point, in view of the candid evidence given by the second respondent (the original complainant), we granted Mr Christopher Bayley’s appeal by consent.

[5] Accordingly, we have reversed the finding of a Committee of the Authority that he had engaged in unsatisfactory conduct in relation to the above basic facts; but we consider it appropriate to make the following observations.

Observations

[6] The Committee had found the appellant guilty of unsatisfactory conduct; but the evidence put before the Committee was rather limited. We have had the benefit of full evidence from a number of witnesses who have been carefully cross-examined. There can be no criticism of the work of the Committee in this case. Indeed, we consistently find that Committees of the Authority apply high judicial standards in their decisions.

[7] Also, we have been advised that the salesperson at Bayleys responsible for the above error about GST has been dealt with by a Committee of the Authority pursuant to a separate complaint.

[8] This saga (for there has been civil litigation arising out of the above basic facts) shows the need for real estate agency firms to establish and always implement an in-house checking procedure of the terms of property agreements drafted by a salesperson and, in particular, of the agreed GST position.

[9] We are advised that since the error in this case arose, Bayleys’ offices have established a strict protocol along those lines. However, at material times to this case, its in-house checking of agreements procedure at Manukau was dependent on the availability of a particular Commercial and Industrial Sales Manager who occasionally, as in the present case, was unavailable due to out-of-office commitments, so that the agreement drafting work of a salesperson went unvetted. At material times, Bayleys Manukau office had a procedure where that manager must approve a salesperson’s agreement, but only if that manager was available. Sometimes, quite infrequently but as in this case, he was not available, so that the agreement was not vetted.

[10] One can understand the concern of Mr John McMillan, the second respondent and complainant, that the contract prepared by a salesperson at Bayleys, Manukau, for the sale of his substantial commercial property went unchecked by anyone in management.

Outcome

[11] We confirm that this appeal is allowed by consent so that the finding of unsatisfactory conduct against Mr C Bayley is quashed.

[12] Pursuant to s.113 of the Act, we record that any person affected by this decision may appeal against it to the High Court by virtue of s.116 of the Act.

Judge P F Barber
Chairperson

Mr J Gaukrodger
Member

Mr G Denley
Member