

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2013] NZREADT 35

READT 059/12

IN THE MATTER OF an application to review a Registrar's decision pursuant to s.112 of the Real Estate Agents Act 2008

BETWEEN **ADRIAN MASON**

Applicant

AND **REGISTRAR OF THE REAL ESTATE AGENTS AUTHORITY**

Respondent

MEMBERS OF TRIBUNAL

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

HEARD at CHRISTCHURCH on 26 March 2013

DATE OF SUBSTANTIVE DECISION 23 JANUARY 2013 (HEARD ON THE PAPERS BY CONSENT) [2013] NZREADT 7

DATE OF THIS FINAL DECISION 8 May 2013

APPEARANCES

Applicant on his own behalf
Mr R McCoubrey counsel for the respondent

FINAL DECISION OF THE TRIBUNAL

[1] In our decision of 23 January 2013 [2013] NZREADT 7, we detailed why we consider that the Registrar of the Real Estate Agents Authority was correct on 15 August 2012 to decline the applicant's application for a salesperson's licence. We were reviewing that decision of the Registrar pursuant to s.112 of the Real Estate Agents Act 2008 ("the Act").

[2] Section 112(3) provides for such a review to be conducted on the papers. Although it seemed to us on the papers that the applicant had not satisfied that he is a fit and proper person to hold a salesperson's licence, we gave him the opportunity to advance his case further before us at a formal fixture. That took place on 26 March 2013.

[3] In our decision of 23 January 2013 we endeavoured to cover all issues fairly comprehensively and the latter part of our decision reads:

Our Conclusions

"[53] In view of the applicant's past convictions and of what has been put before us about him, we think that his integrity, trustworthiness, and general rectitude of character are questionable at least in terms of being entrusted with real estate agency work. On the balance of probabilities, we are not satisfied that the applicant is a fit and proper person to hold a real estate agents licence.

[54] We said in Revill that each application must be decided on its own facts. Importantly, in that case we decided there was material showing that (on the balance of probabilities) an applicant with a poor past history had changed his life and, as such, is a fit and proper person to hold a salesperson's licence at the time of application.

[55] We consider that to issue the present applicant a real estate salesperson's licence would run counter to the purpose of the consumer-focused Act and its high expectations for licences as seen, for example, in the requirements of the licensing regime.

[56] Accordingly, at this stage it seems to us that the Registrar's decision was correct and that the applicant has not satisfied us that he is a fit and proper person to hold a salespersons' licence. This would mean that this appeal be dismissed."

Further evidence Adduced to us on 26 March 2013

[4] At the fixture of 26 March 2013, evidence for the applicant (both written and oral) was given by a Mrs L Dacombe-Valentine and by the applicant himself.

[5] Mrs Dacombe-Valentine has known the applicant for well over 10 years and he seemed to have been an employee of her and her husband in various nightclubs. She spoke very highly of the applicant's reliability, honesty, and trustworthiness and said that the applicant had become a friend of her and her husband. She also referred to the applicant having provided many acts of kindness to her mother-in-law who has a head injury and is a wheelchair patient.

[6] She felt that the applicant had been candid with her about his past and said that he had always been "*truthful, honest and upfront*" with her. In fact he had not fully disclosed to her all problems from his past but we place no store on that for present purposes.

[7] Although Mrs Dacombe-Valentine seems very involved in assisting her husband operate nightclubs, she has spent the past 10 years or so in the media industry as a senior advertising consultant. From her experience she speaks very highly of the applicant and regards him as a role model and as a person who has overcome his past and would greatly succeed as a real estate salesperson.

[8] In oral evidence she confirmed that they had been friends for over 15 years and put it that he has greatly grown up in that time and wants to move ahead with his life.

[9] In cross-examination of Mrs Dacombe-Valentine it emerged that she had not been apprised in complete detail about the applicant's past criminal and litigation history, but substantially so.

[10] It seemed that the applicant had been an excellent head-doorman at the nightclubs of the witness and her husband. Mrs Dacombe-Valentine was aware of such details that the applicant seems to be suing a lawyer for negligent advice about a past criminal prosecution.

[11] The applicant had filed with us a letter of 15 March 2013 reading:

"Further Charges

I am also required to inform you of a charge of importing in 2005.

I was convicted of this at trial, due to negligence on my lawyers part. I appealed with a new lawyer.

The Court of Appeal quashed the conviction due to a misdirection by the Judge to the jury and a re-trial was ordered.

At the re-trial, my new lawyer produced the evidence that should have been produced by original trial lawyers and the case was dismissed under section 347".

[12] The applicant also gave evidence and, particularly, referred to the 2008 Liquor Licensing decision which we covered in some detail in our decision of 23 January 2013. He said he had not attended that particular hearing as the application before the Authority had nothing to do with him. However, he knew that the Liquor Licensing Authority had been told that he would be working for the person seeking an on-licence (a Mr G L Davies); and that would be an issue for Mr Davies but not if he (the present applicant) did not work at the bar nor handle money. The present applicant thought that it was put to Mr Davies by the Liquor Licensing Authority that the applicant was behind that Liquor Licensing application but says that it was entirely the business matter of Mr Davies. Accordingly, the present applicant had not advised Mrs Dacombe-Valentine about that 2008 liquor licensing situation.

[13] With regard to the applicant's criminal offending in 1987, he told us he could make no excuse and was stupid to have gone along with the others involved. Also, he asserted that he did not minimise his offending of 2001 but had simply not known that his friends had been involved in burglary so that he had, unwittingly he put it, been driving them away from a crime scene. We referred to his past criminal offending in our said decision of 23 January 2013.

[14] He insists that he was not involved in the so called 2005 drug importing matter so he had not raised it with the Authority; and he had been entirely acquitted of that 2005 charge; and was suing his lawyer for mishandling it on his behalf.

[15] The applicant said that he has been very interested in real estate matters over 10 years or so and, for some time, has been buying houses, renovating them (with the help of his mother), and then selling them; and repeating that concept and activity.

[16] He puts it that he has kept out of trouble for 10 years and shown that he has turned his life around. He says he has built up networks of friends and acquaintances in the building industry and could succeed as a real estate salesperson. He says he would expect to do well in leasing commercial premises rather than selling them. He seems to have built up a connection with a particular real estate franchise but they are not fully aware of his criminal offending background.

Discussion

[17] Mr McCoubrey pointed out, as did we in our decision of 23 January 2013, that the Act presumes that our decision on such a review as this will be issued on the papers and we could have left matters as we decided them in our decision of 23 January 2013. Indeed, the applicant had elected that we deal with the matter “*on the papers*”.

[18] Mr McCoubrey then referred to various passages in our 23 January 2013 decision and expressed agreement with our reasoning there and in that decision overall. Inter alia, Mr McCoubrey referred to our paras dealing with the relevant law and our concluding that we must act in the interests of the community having regard for the real estate profession and that the purpose of the Act is consumer focused.

[19] Mr McCoubrey submitted that our application of the law would lead us to a regrettable decision from the applicant’s point of view, but so be it.

[20] Inter alia Mr McCoubrey stressed that a real estate salesperson must have complete integrity. He put it that the nature of that profession means responsibility for the real estate salesperson with regard to the privacy of vendors and purchasers and their security in their homes, and that the obligations of a real estate salesperson were “*a world away from guarding a nightclub*” in terms of the integrity required.

[21] Essentially, Mr McCoubrey endorsed all our views set out in our said decision on 23 January 2013 which we do not think it necessary to repeat at this point. We simply confirm them and incorporate them into this final decision.

[22] We are conscious of the response of the applicant that his licence as a security guard allows him to stand guard over people’s houses and property and, he put it, that is not a world apart from the responsibility of a real estate salesperson. He noted that to obtain a security guard’s licence there need to be many extensive interviews with the Police. We take those factors into account.

[23] He put it that he had been candid with Mrs Dacombe-Valentine but said that, although he told her about his past convictions, he did not give much detail unless she had asked. He feels he has paid a high price for his criminal offending and emphasised that his quashed conviction of 2006 should be regarded as if there had been no offending. Certainly, that is how we have treated that situation. He said that if a real estate salesperson’s licence could be granted to him he would be willing to be closely supervised for six months or so.

[24] We have carefully reconsidered the views we set out in our said decision of 23 January 2013 together with the further information and advantage of viva voce evidence on 26 March 2013.

[25] We accept that the applicant has many talents, personality, and is fluent. However, he seeks to join the profession of dealing in real estate and, for the reasons we have set out fairly extensively in our decision of 23 January 2013, we find that his background precludes him from obtaining a real estate salesperson's licence. Standards need to be maintained and consumers need to be carefully protected. As an aside we note that he has been unable to put any real estate industry support before us other than vague assertions.

Outcome

[26] Accordingly, we confirm the views we expressed in our decision of 23 January 2013 and the declinature stance taken by the Registrar regarding the applicant's application for a salesperson's licence. Therefore, we dismiss this application. It seems to us that no issue of costs arises.

[27] 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