

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2013] NZREADT 39

READT 016/11

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

BETWEEN **REAL ESTATE AGENTS**
AUTHORITY (CAC 10027)

Prosecutor

AND **JOSEPH BRANKIN (LICENSED**
AGENT)

Defendant

MEMBERS OF TRIBUNAL

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

HEARD at CHRISTCHURCH on 18 and 19 October 2012 (with subsequent typewritten submissions)

DATE OF SUBSTANTIVE DECISION 24 April 2013 issued as [2013]
NZREADT 32

DATE OF THIS PENALTY DECISION 13 May 2013

COUNSEL

Mr L J Clancy for prosecution
Mr J J McCall for defendant

DECISION OF THE TRIBUNAL ON PENALTY

[1] Our substantive decision herein of 24 April 2013 ended with the following paragraphs:

"[103] We accept that only orders which could have been made against the defendant under the 1976 Act are available to us upon finding that the defendant's conduct has amounted to misconduct under the 2008 Act. It also follows, in terms of s.172 of the Act, that the only orders now available to us by way of penalty against the defendant are cancellation of the defendant's

certificate of approval; suspending that certificate of approval; and/or imposing a fine up to \$750. The Board could have made such orders under s.99(1) and (4) of the 1976 Act. We also accept that the effect of s.172 is that, if we were relying on a finding of unsatisfactory conduct by the defendant, rather than misconduct, no orders by way of penalty would be available to us as orders would only have been available against the defendant's employing agent rather than against himself.

[104] Subject to either party wishing to make further submissions on penalty, we do not think it appropriate to cancel or suspend the defendant's licence. We consider that in the rather curious circumstances of this case, and taking into account that the defendant has gratuitously paid Ms Smith \$10,000 with no tags or conditions as a result of our suggestion, and that we should fine the defendant \$750, and also bearing in mind that we are not prepared to make a Non Publication Order; then there has been appropriate and sufficient penalty for the defendant in this case.

[105] If the parties accept the above suggestions for penalty, the fine of \$750 is to be paid to the Registrar of the Authority within 15 working days from the date of this decision. We would also Order costs to this Tribunal of \$1,750 against the defendant to be paid to the Tribunals Unit, Ministry of Justice, Wellington also within the said 15 days.

[106] We note that there has been previous publicity in a newspaper about this prosecution but, in any case, we consider that any interest the defendant may have in non-publication does not outweigh the public interest in open reporting and transparency in our processes."

[2] At a 10 May 2013 Directions Hearing by telephone before Chairperson Judge P F Barber our suggestions on penalty were accepted and also our view that there be no name suppression order for the defendant. However, it seems just to grant suppression for the defendant's employer company.

[3] Accordingly we formally Order as follows:

- [a] The defendant is fined \$750 to be paid to the Registrar of the Authority at Wellington within 15 working days from the date of this penalty decision;
- [b] The defendant is to also pay \$1,750 towards the costs this Disciplinary Tribunal to the Tribunals Unit, Ministry of Justice, Wellington, also within the said 15 working day period;
- [c] Although we make no suppression order in favour of the defendant, we Order that the name of the real estate agency company for which the defendant works is to be suppressed from any publication of our substantive decision of 24 April 2013 which will be edited accordingly by our Registrar and be approved by our Chairperson.

[4] 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 G Denley
Member



Mr J Gaukrodger
Member