

Decision No: [2013] NZREADT 40

Reference No: READT 025/12

IN THE MATTER OF

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

BETWEEN

**REAL ESTATE AGENTS AUTHORITY
(CAC 20002)**

AND

JOHN RICHARD LLOYD

Defendant

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

Ms K Davenport - Chairperson
Ms N Dangen - Member
Mr J Gaukrodger - Member

APPEARANCES

Mr L Clancy for the Real Estate Agents Authority
Mr Waymouth for the Defendant

HELD on the papers

PENALTY DECISION

[1] Mr Lloyd is a former real estate agent who practised in Tairua. The Tribunal made a finding that Mr Lloyd was guilty of one charge of professional misconduct under section 73 of the Real Estate Agents Act in its decision dated 11th March 2013. These events took place before the Real Estate Agents Act 2008 came into force.

[2] The principles of sentencing have been laid out in a number of previous cases of the Tribunal. Recently the High Court decision of *Kumandan v REAA* [2012] NZHC 3555 assists the Tribunal in determining how to deal with conduct that arises before the coming into effect of the Real Estate Agents Act 2008.

[3] Counsel accept that the two penalties which would be appropriate for the Tribunal to consider are cancellation or suspension of Mr Lloyd's licence (provided that section 99(1)(b) of the Real Estate Agents Act 1976 had been established) and a maximum financial penalty of \$750.

[4] However Mr Waymouth advises the Tribunal that Mr Lloyd is not currently registered as a real estate agent. In those circumstances, he submits that cancellation or suspension is not available to be considered by the Tribunal.

[5] The REAA accepts that Mr Lloyd no longer has a current licence. He relinquished it shortly prior to the hearing. Accordingly the REAA accepts that he cannot be disciplined by suspension or cancellation.

[6] The REAA however ask the Tribunal to make an indication of whether such a sentence would have been imposed had Mr Lloyd been an agent so that any later application by Mr Lloyd for a licence could be considered by the Registrar in light of these submissions.

[7] We do not consider it appropriate to give an indicative penalty. We consider that should Mr Lloyd reapply for a licence then the facts of the Tribunal's finding will be available to the REAA and will offer a guide to determining whether Mr Lloyd ought to be granted a licence or not.

[8] However, the Tribunal consider that had Mr Lloyd been licensed, then the seriousness of this offence would have been one where cancellation or suspension of Mr Lloyd's licence would have been appropriate for the Tribunal to consider. The Tribunal do not have the benefit of submissions from Mr Waymouth on this point and so cannot comment any further.

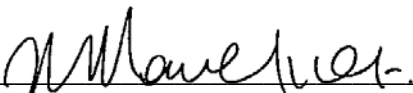
[9] The Tribunal does wish to note that it is concerned that Mr Lloyd apparently surrendered his licence only two days before the Tribunal hearing and without the Tribunal or the REAA being aware that he had done so. We do not have sufficient information to draw the conclusion that he did this as a result of his desire to minimise any penalty but consider it a significant event which would need to be more fully explored had we been imposing a penalty under the Real Estate Agents Act 2008.

[10] We consider that the circumstances of this case are that a fine towards the maximum end of \$750 would be appropriate. The reason for this is that Mr Lloyd put forward the forged signature as being indicative of a concluded agreement between the parties which had consequences in their negotiations. We accept Mr Waymouth's submission that there was no evidence of personal gain but nonetheless consider that any forgery is contrary to the basic premise of total honesty that must govern an agent.

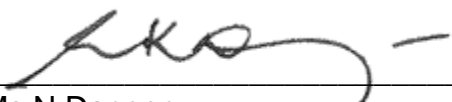
[11] The profession needs to understand that any form of forgery by an agent (even when not acting as an agent) has serious consequences. Accordingly, the Tribunal fine Mr Lloyd the sum of \$700.

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

DATED at AUCKLAND this 16th day of May 2013



Ms K Davenport
Chairperson



Ms N Dangen
Member



Mr J Gaukrodger
Member