

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2013] NZREADT 43

READT 023/11

IN THE MATTER OF

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

BETWEEN

DAVID MAKA

Applicant

AND

REGISTRAR OF THE REAL ESTATE AGENTS AUTHORITY

Respondent

MEMBERS OF TRIBUNAL

Judge P F Barber - Chairperson
Mr G Denley - Member
Ms N Dangen - Member

HEARD ON THE PAPERS

DATE OF THIS DECISION 17 May 2013

COUNSEL

The applicant on his own behalf
Mr M J Hodge for the Registrar of the respondent

DECISION OF THE TRIBUNAL

Introduction

The Application for Review

[1] Mr D Maka has applied for us to review the 19 January 2011 determination of the respondent declining to renew the applicant's real estate salesperson's licence on the grounds that he is prohibited from holding that licence under s.37(1)(a) of the Real Estate Agents 2008.

[2] The point is that in early 2011 the Registrar became aware that the applicant has five convictions as at 19 July 2006 for causing loss by deception under s.240 of the Crimes Act 1961. There was a delay in the Registrar being able to address the issue because the applicant had sought a rehearing of those convictions in the District Court; but that was declined in late 2010.

[3] The application for review was made to us on 4 February 2011 with informative supporting documents.

[4] On 15 February 2011 one of our case managers acknowledged the application, advised the applicant on appropriate procedures, and copied all that to counsel for the Authority.

[5] On 9 March 2011 we received submissions from counsel for the Registrar. Also on that day, the applicant was advised of that by email and that 23 March 2011 was the date set for him to respond.

[6] On 19 April 2011 our case manager made two attempts to telephone the applicant on a mobile telephone number provided by the applicant for that purpose; but an auto message on the telephone stated that number is not permitted to receive calls.

[7] On 14 February 2013 our Chairperson was advised that apart from receiving the application to review, the Registry had not had any other contact with the applicant. The Chairperson directed that a case manager write to the applicant at his home address and advise that unless he responds within 15 working days, this application will be struck out for non-prosecution.

[8] On 18 March 2013 one of our case managers received a telephone call from the applicant advising that he wished to pursue the said review application to us. This led to a Directions Conference taking place by telephone on 28 March 2013 between the applicant, Mr L J Clancy as counsel for the Authority, and our Chairperson. Quite a full discussion took place regarding the content of the applicant's case. The applicant appeared to realise that, at least prima facie, the wording of s.37(1)(a) of the Act prevents him from being a real estate salesperson for a period of ten years from 19 July 2010 as the date of his said convictions. From our point of view, he is entitled to a hearing before us if he wishes – although the Act provides for such reviews/appeals to us to be generally “*on the papers*” – refer s.112(3).

[9] The applicant then advised that he would reflect on his position and advise us within two weeks from 28 March 2013 whether he still wished to take this matter ahead.

[10] There has been no response from him. One of our case managers has endeavoured to contact him by telephone and, indeed, left him a voicemail message on both 16 April 2013 and 23 April 2013.

[11] In all the circumstances, we hereby dismiss the application for non-prosecution.

[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 G Denley
Member

Ms N Dangen
Member