**BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

[2013] NZREADT 51

READT 40/12

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| **IN THE MATTER OF** | an appeal under s.111 of the Real Estate Agents Act 2008 |
| | An application for non-publication under s.108 of the Real Estate Agents Act 2008 |
| **BETWEEN** | **LEE RYAN** |
| | Appellant |
| **AND** | **THE REAL ESTATE AGENTS AUTHORITY (CAC 10067)** |
| | First respondent |
| **AND** | **FRASER SKINNER** |
| | Second respondent (Applicant) |

**MEMBERS OF TRIBUNAL**

Judge P F Barber - Chairperson
Ms N Dangen - Member
Mr J Gaukrodger - Member

**HEARD** at QUEENSTOWN on 19 February 2013 (with subsequent written submissions)

**DATE OF ISSUE OF OUR SUBSTANTIVE DECISION** 28 May 2013

**DATE OF THIS DECISION ON NAME SUPPRESSION** 1 July 2013

**APPEARANCES**

Appellant on her own behalf (but she did not participate in name suppression issue)
Mr M J Hodge, counsel for the Authority
Mr M E Parker, counsel for second respondent/licensee

## DECISION OF THE TRIBUNAL ON NAME SUPPRESSION

### *Background*

[1] By an email application of 30 May 2013, counsel for the second respondent licensee requested that the initial order of the Committee giving name suppression of the parties remain in place. Mr Parker seeks name suppression for the licensee in relation to our decision of 28 May 2013. There, we found that it had not been proved that the licensee's conduct was unsatisfactory and there had certainly not been misconduct on his part, and we dismissed the appeal against him and confirmed that

the appropriate course is to take no further action. We then said at our para [64] of that decision:

> *"[64] In terms of the public register provision in the Act and the basic approach of the need for open justice in the public interest, we are not presently attracted to any aspect of non-publication or name suppression in this case, but, of course, there is leave to apply in that respect in terms of s.108 of the Act should there be a proper need to protect the public interest or the privacy of some person."*

***Submissions on Name Suppression***

[2] Mr Parker puts it that even though the licensee has been successful in the proceedings initiated by Ms Lee Ryan, he is to suffer a penalty by way of a publication which will necessarily associate his good name with a complaint under the Real Estate Agents 2008. Mr Parker then continued:

> *"It is well recognised that the reading of newspaper and other media reports can be impressionistic and it is not beneficial to Mr Skinner's reputation for his name to be associated with a complaint in circumstances where it has been decided by both the CAC and the Tribunal that no further action is required in relation to the complaint."*

[3] Mr Parker also puts it that if our decision of 28 May 2013 is published on the basis of omitting the names and identifying details of any of the parties, lessons to be learned from the decision will still be published for the benefit of the public and the real estate industry, but also preserving the licensee's good name. Mr Parker submits that to be a just and reasonable outcome *"particularly, given the stress that he [the licensee] has experienced as part of this process"*.

[4] The response of Mr Hodge, on behalf of the Authority, has been to note that we have upheld the Committee's decision to take no further action on the complaint made against the licensee so that the licensee has been found not guilty of disciplinary wrongdoing. Mr Hodge emphasises that although issues of public protection and the public register provisions of the Act are accordingly not engaged, the principle of open justice is engaged. We certainly agree that the principle of open justice is very much in issue. Mr Hodge then stated:

> *"3. In Raos v CAC & Anor [2011] NZREADT 34 the Tribunal considered an application by the licensee, Mrs Raos, for name suppression in a case where the Tribunal similarly found that she had not been guilty of disciplinary wrongdoing. In those circumstances the Tribunal considered that publication encroached into Mrs Raos' privacy only to a limited degree and that it was in the public interest that the Tribunal's decision was available, and related to the particular parties.*
>
> *4. In this case, the request by the second respondent for an order prohibiting publication of his name may arguably be seen as a submission that such an order should always be made where no disciplinary wrongdoing is found to have occurred. It is submitted that any such rule, de facto or otherwise, would be contrary to the principle of open justice."*

***Further Law***

[5] It is accepted that under s.108 of the Real Estate Agents Act 2008 we have extensive powers to make orders prohibiting publication. Those powers are prefaced with the words *"If the Disciplinary Tribunal is of the opinion that it is proper to do so, having regard to the interest of any person (including (without limitation) the privacy of the complainant (if any)) and to the public interest, it may make 1 or more of the following orders ..."*.

[6] A number of our decisions have dealt with non-publication applications, but each case must be analysed in terms of its particular facts and factors. Such decisions abide by such case authorities as *Lewis v Wilson & Horton Ltd* [2000] 3NZLR 546 (CA) where Her Honour Elias CJ said:

> *"In R V Riddell ... this Court of Appeal declined to lay down any code to govern the exercise of a discretion conferred by Parliament in terms which are unfettered by legislative prescription. But it recognised that the starting point must always be the importance of freedom of speech recognised by s.14 of the New Zealand Bill of Rights Act 1990, the importance of open judicial proceedings, and the right of the media to report Court proceedings: what has to be stressed is that the prima facie presumption as to reporting is always in favour of openness."*

[7] We have also adopted the views accepted by a full bench of the High Court in *S v Wellington District Law Society* [2001] NZAR 465 (HC) that the public interest to be considered in non-publication applications in disciplinary hearings requires consideration of the extent to which publication of the proceedings would provide some degree of protection to the public, the profession, or the Court. It is this public interest that is to be weighed against the interests of other persons, including the licensee.

[8] There is a presumption of publication of our decision subject only to our making an order for non-publication in terms of s.108 of the Act.

***Our Views***

[9] We agree with Mr Hodge that although Mr Parker has referred to directions made by the Committee in this case about publication, they are of limited relevance as different rules and considerations apply from our perspective.

[10] We can understand Mr Parker's reference to some people's reading of a newspaper or interpretation of other media reports as being *"impressionistic"*, and that reporting of this case in the media could result in some type of perception of unfairness from the point of view of the licensee. However, as Mr Hodge put it, we are not in a position to make non-publication orders based on concerns about how matters *"might"* be reported in the media, or understood by *"impressionistic"* readers. Any concerns about unfair or unbalanced reporting must be dealt with by the regulatory authorities which govern the media.

[11] Because the present licensee has been cleared of any disciplinary wrongdoing, there cannot be any publication on the public register established under the Act. The issue now before us relates only to our publication of our decision in the usual way as part of our database of decisions available to the public.

[12] In this case, we do not find any compelling reason for encroaching upon the principle of open justice in terms of the interests of the licensee. It is certainly not the law that there be suppression of the accused's name whenever an accused is found to be innocent. As we flagged in our substantive decision, in terms of the basic approach of the need for open justice in the public interest, any aspect of non-publication or name suppression in this case is inappropriate. Also, a thoughtful reading of our 28 May 2013 decision should not lead to any negative view of the talents and experience of the licensee.

[13] Accordingly, the licensee's application for name suppression is dismissed.

[14] 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.

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Judge P F Barber
Chairperson

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Ms N Dangen
Member

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Mr J Gaukrodger
Member