

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2013] NZREADT 59

READT 95/12 and 97/12

IN THE MATTER OF

appeals under s.111 of the Real Estate Agents Act 2008

BETWEEN

JENNIFER BURGESS
(READT 95/12)

Appellant

AND

REAL ESTATE AGENTS
AUTHORITY (CAC 20002)

First respondent

AND

SIMON TREMAIN

Second respondent

AND

BETWEEN

SIMON TREMAIN (READT 97/12)

Appellant

AND

REAL ESTATE AGENTS
AUTHORITY (CAC20002)

First respondent

AND

JENNIFER BURGESS

Second respondent

MEMBERS OF TRIBUNAL

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

HEARD at HASTINGS on 9 July 2013

DATE OF DECISION 12 July 2013

REPRESENTATION

Mrs J Burgess on her own behalf
Ms S G L Locke, counsel for the Authority
Mr M Lawson, counsel for Mr S Tremain

DECISION OF THE TRIBUNAL

The General Issues

[1] Disputes arose between the licensee, (Mr S Tremain) and Mr and Mrs Burgess mainly about water ingress problems and the safety structure of decks well after the complainants had purchased a bach at Waipakiti Road, Napier, from the complainants' family on 11 September 2009. This was before the Real Estate Agents Act 2008 came into force. A Committee of the Authority found that there was unsatisfactory conduct on the part of the licensee who was censured and fined \$750; but he appealed to us seeking to quash that finding, and Mr and Mrs Burgess cross-appealed seeking a finding of misconduct against the licensee.

[2] After the matter had been part heard before us for about an hour and a half, we suggested that settlement talks upon certain lines could be useful. The parties immediately pursued that concept and achieved a signed settlement agreement. For present purposes, we simply record that the settlement dealt with the licensee committing to pay for certain waterproofing work to a garage and for the inspection of decks on the main dwelling so that he could remedy any structural defects which might render the deck unsafe.

[3] We particularly note the settlement term that neither party shall make any statement in relation to these proceedings and their settlement. When the remedial work has been completed, both the appeals before us are to be withdrawn.

[4] We have adjourned the appeals part-heard for two months from 9 July 2013 to enable implementation of the settlement.

[5] Accordingly, we record as follows:

- [a] The parties have entered into the said settlement agreement dated 9 July 2013;
- [b] Subject to performance of that agreement, it is contemplated that, within the two month adjournment period referred to above, both appeals will be withdrawn;
- [c] We have available to us considerably more evidence than was available to the Committee, and we consider that the finding of unsatisfactory conduct against the licensee must be regarded as at a low level in the particular circumstances;
- [d] Should the terms of the settlement agreement be not implemented within two months from the date of this memorandum, we reserve the right to reconvene the hearing and proceed to a determination of each appeal in the usual way;
- [e] Obviously, a consequence of the appeals being withdrawn as contemplated will be that the Committee's determination remains in force;
- [f] We have congratulated the parties for quite quickly signing a settlement soon after we suggested settlement as a possibility, and on terms which we regard as fair and sensible.

[6] 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

Ms N Dangen
Member

Mr G Denley
Member