

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2013] NZREADT 7

READT 059/12

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

BETWEEN **ADRIAN MASON**

Applicant

AND **THE REAL ESTATE AGENTS AUTHORITY**

Respondent

MEMBERS OF TRIBUNAL

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

BY CONSENT HEARD ON THE PAPERS

DATE OF THIS DECISION 23 January 2013

COUNSEL

Ms Helen Smith and Mr S Carodus for applicant
Ms Heather McKenzie for respondent

DECISION OF THE TRIBUNAL

The Application

[1] On 15 August 2012 the Registrar of the Real Estate Agents Authority declined Adrian Mason's ("the applicant") application for a salesperson's licence.

[2] The applicant seeks that we review the Registrar's decision pursuant to s.112 of the Real Estate Agents Act 2008 ("the Act"). Interestingly, s.112(3) reads:

"(3) The review must be conducted on the papers unless the applicant requests to be heard in his or her application."

[3] The Authority (the respondent) submits that the Registrar was correct to decline to grant the applicant a salesperson's licence on the basis that he was not a fit and proper person. The applicant has approximately 18 convictions and most are for dishonesty-related offending which seem likely to have been committed for financial

gain. The respondent submits such conduct is incompatible with the standards expected of a salesperson under this consumer-focused act and, more specifically, its licensing regime which requires a successful applicant to be a “fit and proper” person to hold a licence.

Our Enquiry on Review

[4] Our enquiry on review is whether the applicant is a fit and proper person to hold such a licence.

[5] We appreciate that we may have a different body of information before us than did the Registrar. This is permitted under s.112(2)(b) of the Act. Each such case is fact specific and we must determine whether the applicant has satisfied the onus of showing, on the balance of probability, that he is a fit and proper person to hold a salesperson’s licence with reference also to any additional material: *Reville v Registrar of the Real Estate Agents Authority* [2011] NZREADT 41 at [41].

[6] That the onus is on the applicant to satisfy us that he is a fit and proper person to hold a licence is clear from the language of s.36(1) and (2) which provide:

“36 Entitlement to licence

“(1) An individual may be licensed as an agent or branch manager if the individual satisfies the Registrar that he or she—

- (a) has attained the age of 18 years; and*
- (b) is not prohibited from holding a licence under section 37; and*
- (c) is a fit and proper person to hold a licence; and*
- (d) has the prescribed qualifications.”*

(2) An individual may be licensed as a salesperson if the individual satisfies the Registrar that he or she—

- (a) has attained the age of 18 years; and*
- (b) is not prohibited from holding a licence under section 37; and*
- (c) is a fit and proper person to hold a licence; and*
- (d) has the prescribed qualifications.*
- (e) has obtained 3 years’ experience in real estate agency work within the 10 years preceding the application to be licensed as an agent or branch manager under this Act.”*

[7] Section 37 prohibits people with certain conviction types from being licensed as salespersons and relevantly provides:

“37 Persons prohibited from being licensed

(1) The following persons are not eligible to hold a licence;

- (a) a person who has been convicted, whether in New Zealand or another country, of a crime involving dishonesty (or of a crime that, if committed in New Zealand, would be a crime involving dishonesty) within the 10 years preceding the application for a licence.”*

[8] The standard of proof is the ordinary civil standard of on the balance of probabilities. However, to meet this standard sufficient and adequate information must be provided. The Supreme Court made this point in *Westfield (New Zealand) Ltd & Anor v North Shore City Council & Anor* [2005] 2 NZLR 597.

[9] The applicant has numerous convictions for crimes involving dishonesty, but these were more than 10 years ago so the s.37(1)(a) prohibition is not engaged.

Relevant Law

[10] As we noted in *Revill v Registrar of the Real Estate Agents Authority* the “fit and proper person” test is wider than the absolute prohibition in s.37. We put it that: “[9] The “fit and proper person” criterion applies in addition to the prohibitions which apply under s.37. In other words, a person may not be prohibited from holding a licence under s.37 but may nevertheless not satisfy the Registrar that he or she is a fit and proper person.”

[11] In *Marie-Ann Nixon v Real Estate Licensing Board of New Zealand* (HC AK 222/93, 23 August 1994 at 21) the High Court held that the starting point in any determination is that good character is presumed unless a real question mark is raised by the evidence. If a question mark has been raised then, as was held in *L v Canterbury District Law Society*, [1999] 1 NZLR 467 (HC) at 474:

“... the [applicant] must establish affirmatively that he is a person of unquestionable integrity, probity and trustworthiness and that since the [offending] he has “so far amended his ways and character that he is now a fit and proper person to practise on his own account.”

[12] In *Re Gazley* (HC WLG CIV-2011-485-1776, 26 October 2011) the High Court remarked:

“[9] ... the focus of the Court’s inquiry is necessarily forward looking and the function of the Court is not to punish the applicant for past conduct. Due recognition should be given to the circumstances of youth where the conduct in question occurred when the candidate was immature and the entire circumstances and wider facts concerning the application must be considered, not just the previous misconduct. The onus is on the candidate to show that he or she is a fit and proper person.”

[13] The decision of *Interim Advance Corporation Pt Ltd v Commissioner for Consumer Protection* [2008] WASAT 81 provides useful guidance on the “fit and proper person” test in the context of a refusal to grant a credit provider’s licence. The State Administrative Tribunal considered a review of a decision not to grant a credit provider’s licence. The general principles as apply to the “fit and proper person” test in Australian law are set out in [29] to [32] of that decision. In particular:

[a] “Fit”, with respect to a particular office, is said to involve three things: honesty, knowledge and ability. That is “honesty to execute it truly, without malice affectation or partiality; knowledge to know what he ought duly to do; and ability as well in estate as in body, and not for impotency or poverty neglect it”: quoting *Hughes & Vale Ptd Ltd v State of New South Wales (No 2)* [1955] 93 CLR 127 at 156;

- [b] Immediately recent and more distant behaviour is relevant to the assessment, though it is not possible to say how far back a Tribunal is able to look: quoting *Re Davis* (1947) 74 CLR 409 at 416;
- [c] “*Fit and proper*” is to be determined in light of the subject matter of the Act in which the expression appears: quoting *Maxwell v Dixon* [1965] WAR 167 at 169;
- [d] It is necessary to assess whether the characteristics of honesty, knowledge, and ability are present in the context of the vocation for which the licence is sought. The State Administrative Tribunal referred to *Sobey v Commercial and Private Agents Board* (1979) 22 SASR 20 at 76, which considered the granting of a licence on an application by an agent. That Court stated:

“... an applicant must show not only that he is possessed of a requisite knowledge of the duties and responsibilities devolving upon him as the holder of a particular licence under the Act, but also that he is possessed of sufficient moral integrity and rectitude of character as to permit him to be safely accredited to the public, without further inquiry, as a person to be entrusted with the sort of work which the licence entails.”

[14] Although *Interim Advance Corp* was dealing with the review of a decision not to grant a credit licence, we agree with the respondent that useful guidance can be taken from its principles. In particular, we may take into account the following factors in exercising our discretionary power.

- [a] Whether the applicant will honestly engage in the duties related to being a salesperson;
- [b] Whether the applicant has the necessary knowledge of his legal obligations and a willingness to abide by them;
- [c] Whether the applicant possesses “*sufficient moral integrity and rectitude of character*” to be accredited to the public via a salesperson’s licence and to undertake the type of work that licence contemplates without further inquiry;
- [d] The purposes of the Act which, at its core, is concerned with consumer protection; and
- [e] The applicant’s past conduct.

[15] The authorities affirm that it is a significant step to deprive a person of a licence or status. See, for example, *Dempster v The Registrar General of Land & Anors* HC AK CIV 2005-404-003178 2 December 2005 at [56] and *Harder v Auckland District Law Society* [1983] NZLR 15 at 17. However, the primary consideration is as emphasised in *Re Owen* [2005] 2 NZLR 536 at [8] that the decision maker must be satisfied objectively that the candidate is a fit and proper person. Judgment is made in the interests of the community, having regard for the profession.

[16] This principle is equally applicable to licensing decisions under the Act. The purpose of the consumer-focused Act (as set out in s.3) is to: *“promote and protect the interests of consumers in respect of transactions that relate to real estate and to promote public confidence in the performance of real estate agency work.”*

[17] It is essential that consumers are able to rely on the honesty and integrity of licensees who act in real estate transactions. It is for this reason that the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009 impose minimum standards requiring licensees to comply with their fiduciary obligations to their clients, to act in good faith and deal fairly with all parties to a transaction, and to not engage in conduct likely to bring the industry into disrepute.

[18] In *Revill* we noted the trust reposed in sales people who typically operate in an individual’s home:

“[22] ... Real estate salespersons typically operate in the privacy of their clients’ homes. Indeed they are required to, for example in providing appraisals. This requires consumers to place a high degree of trust in licensees and could leave consumers in a vulnerable position ...”

[19] The scheme of the licensing regime as found in Part of the Act highlights the importance that licensees are *“fit and proper”* people. For example, there is a requirement that an applicant advertise their application (s.39) and there can be objections to the issuing of a licence (s.40). the issuing of a licence is discretionary, as is seen in the words of s.36(2): *“An individual may be licensed as a salesperson if the individual satisfies the Registrar that he or she ... [emphasis added]*

[20] Licences last for one year (s.46) and must be renewed (s.52). The requirements for renewal of a licence substantively overlap with those for first applicants and there is a further requirement for any prescribed continuing education (s.52(3)). Lastly, the details of licensees are recorded on the public Register of Licences (s.63). The details which must be recorded are fairly comprehensive (see s.66).

The Application and Decision to Decline

[21] The 42 year old applicant applied for a salesperson’s licence by application dated 1 August 2012. He attained a National Certificate in Real Estate (Salesperson) Level 4 in November 2011.

[22] On the Declaration in Support of Application by Individual for Salesperson’s Licence, the applicant did not disclose his previous convictions under, for example, the head *“... other circumstances that would or might make me not a fit and proper person to hold a licence”*.

[23] His referee Ralph McGuigan refers to being made aware of *“[the applicant’s] conviction on a burglary charge ... in 2001”* and goes on to note that he does not *“believe that this conviction is a reflection of Adrian or his character.”* From this, the respondent cannot ascertain whether Mr McGuigan is aware of the applicant’s full criminal history.

[24] His second referee, Richard Croucher, ticks the box indicating that the applicant has been convicted, but does not provide further information as the referee form requests.

[25] The decision to decline was based on the applicant's "*large number of convictions, including convictions for burglary and theft*". The Registrar considered that this meant that the applicant was not a fit and proper person to be licensed as a salesperson under s.32(2)(c) of the Act.

[26] In declining the applicant's application, the Registrar's letter went on to record:

"Given that consumers provide real estate agents with access to their homes it is important that consumers have confidence that those who hold licences have the highest level of honesty and integrity. Although the majority of those convictions were in 1987 I consider that the large number of offences is of concern, particularly when further offending occurred more recently, in 2001. These convictions means that I am not satisfied that you have the requisite level of honesty and integrity for entry into the industry and, therefore, that you are not a fit and proper person to hold a licence."

A 2008 Liquor Licensing Decision Involving the Applicant

[27] The respondent submits that the June 2008 decision of the Liquor Licensing Authority (LLA) [2008] NZLLA 925 9 July 2008 is relevant to the application in so far as it involved the applicant. Apparently, it was not before the Registrar when she made her decision. That LLA decision related to an application for an on-licence in Christchurch premises by a Mr G L Davies. The premises had been operated as a nightclub but the on-licence seemed to be sought for a tavern. The respondent highlights the following findings in that decision:

- [a] The Police opposition to the application on the grounds that Mr Mason was closely associated with the trust that owned the business and acted on its behalf;
- [b] The District Licensing Agency Inspector's opposition and concerns about the relationship between Mr Davies and Mr Mason;
- [c] Mr Mason's complex business practices – see for example [19] of that decision where the LLA recorded the District Licensing Agency Inspector's view that Mr Davies was "*acting as a front for Mr Mason*";
- [d] The "*primary obstacle*" for the applicant – Mr Davies, not Mr Mason – was his association with Mr Mason – at [27];
- [e] The seriousness of the June 2001 offending as outlined at [28]. The LLA decision records that Mr Mason "*acknowledged that he was in serious debt and needed money to avoid bankruptcy*". It then went on to note that Mr Mason was a solo father receiving the domestic purposes benefit but was also running a small licensed premises;
- [f] The LLA considered that the concerns expressed by the reporting agencies "*might well be justified*" given Mr Mason's then recent

involvement with the sale of party pills, then outstanding charges of breaching the Medicines Act, and his reaction to questions from the Police: at [29];

[g] It was “not possible” to separate Mr Mason from the business known as “Granite” and there was an inference that the decision not to apply for the licence in Mr Mason’s name was deliberate: at [30].

[28] We note that paras [27] to [30] of that Liquor Licensing Authority decision read:

“[27] In summary, Mr Davies carries the onus of establishing his suitability. The primary obstacle is his association with Mr Mason. This is an association that he appears grateful to have. Mr Mason came before us on 8 August 2001 when he opposed an application to cancel his General Manager’s Certificate. Mr Mason was 31 at the time. When he was aged 17, he had been convicted of seven charges of burglary, one charge of attempted burglary, five charges of theft from a car, and one charge of theft of a servant. He had been sentenced to a Residential Community Programme.

[28] On 20 June 2001 at 5.00 am, a car being driven by Mr Mason was stopped. The passenger ran away but was apprehended. Twenty-two cameras valued at \$7,500 were found in the boot. A nearby photographic shop had been burgled at 4.40 am. Apart from cameras and 40 rolls of film, the cash float of \$200 had been taken. Mr Mason was found to have handfuls of cash in his jacket pockets. He acknowledged that he was in serious debt and needed money to avoid bankruptcy. He was said to be a solo father receiving the domestic purposes benefit, although running a small licensed premises as well.

[29] In the decision of John Francis Armstrong v Adrian Nicholas Mason LLA PH 351/2001 Mr Mason’s General Manager’s Certificate was cancelled. He was subsequently convicted of burglary and entering with intent, and sentenced to nine months imprisonment. We did not hear from Mr Mason. It is possible that over the last seven years he has managed to put the past behind him. On the other hand, his recent involvement with the sale of party pills, as well as the outstanding charges of breaching the Medicines Act, and his reaction to the questions from the Police, would indicate that the concerns expressed by the reporting agencies might well be justified.

[30] In our view it is not possible to separate Mr Mason from the business known as “Granite”. It is clear that the original intention was for the trust to purchase the business. However Mr Mason is the sole trustee and the inference is that it was decided not to apply for the licence in his name. It is clear that the income from the business is paid into the account of a company of which Mr Mason is the sole director. Mr Mason is paid a weekly retainer by Mr Davies’ trust. Mr Mason arranges and sometimes pays for the entertainment that takes place at the premises. He drives a car that is linked to the business. He is responsible for the wages.”

Discussion

[29] Submissions and associated materials have been filed for both parties.

[30] The applicant has a number of convictions arising from dishonesty offences. He relevantly has eight convictions for burglary (including several at night), one for entering with intent, five for theft ex car, and one for theft as a servant. These all took place over September/October 1987 in Upper Hutt. Also there was a further burglary offence in Christchurch on 20 June 2001 for which he was sentenced to nine months' imprisonment with leave to apply for home detention.

[31] The respondent submits that the number and nature of the applicant's previous convictions means that he is not a fit and proper person to hold a salesperson's licence. Salespersons, to use our words in *Reville*, "... typically operate in the privacy of their clients' homes. Indeed they are required to, for example in providing appraisals. This requires consumers to place a high degree of trust in licensees and could leave consumers in a vulnerable position ..."

[32] With reference to *Interim Advance Corporation Pty Ltd v Commissioner for Consumer Protection* and the excerpt quoted therein and set out above, the respondent submits that the applicant is not "possessed of sufficient moral integrity and rectitude of character" to "be entrusted with the sort of work which the licence entails" given a salesperson's licence entails a successful applicant being in other peoples' homes.

A letter to us from the applicant appears to seek to minimise his 2001 offending by asserting that he was dropping off a friend in town, but that the friend asked him to stop in an alley way, soon after the friend returned with a bag and told the applicant to drive off. In comparison, the LLA's summary of that offending puts it the applicant's involvement was much greater:

"[28] On 20 June 2001 at 5.00 am, a car being driven by Mr Mason was stopped. The passenger ran away but was apprehended. Twenty-two cameras valued at \$7,500 were found in the boot. A nearby photographic shop had been burgled at 4.40 am. Apart from cameras and 40 rolls of film, the cash float of \$200 had been taken. Mr Mason was found to have handfuls of cash in his jacket pockets. He acknowledged that he was in serious debt and needed money to avoid bankruptcy ..."

[33] The respondent notes that in 2006 the applicant had a conviction and sentence overturned by the Court of Appeal: *R v Mason* CA 340/05 16 March 2006. The Court of Appeal decision was not before the Registrar and was not considered when she declined to grant the applicant's application. The applicant had been convicted by a jury in the District Court at Christchurch on a count of importing into New Zealand the class C controlled drug pseudoephedrine and was sentenced to three years' imprisonment. The appeal was dismissed due to an inaccuracy in the prosecutor's final address to the jury in stating the law on importation and it not having been sufficiently corrected in the summing up: *R v Mason* CA 340/05 16 March 2006 at [6].

[34] We agree with counsel for the respondent that an applicant for review of a decision declining to grant a salesperson's licence must apply full candour and honesty if making positive representations that he has reformed. There had been no

previous reference to this further alleged offending and conviction, notwithstanding the final favourable outcome to the applicant. Indeed, the submissions filed on his behalf positively note *“There are no other criminal offences”* and *“There are no traffic or criminal convictions after 2002”*. The traffic convictions were on 23 October 2002 for driving while licence suspended or revoked on 11 August 2002 and careless driving in February 1993.

[35] The respondent submits that an application made with the transparency, which the Act expects of a fit and proper person, would have disclosed the quashed conviction and sentence, and that this is all the more relevant given the seriousness of the alleged offending and stern sentence imposed. We take that factor into account.

[36] Mrs McKenzie also pointed out that the Court of Appeal judgment records at [3] that the applicant signed for the parcel in question using the name *“Rangiwahia”* rather than his own name.

[37] We accept that this lack of disclosure of the 2006 Court of Appeal decision does not destroy the necessary *“unquestionable integrity”* concept referred to in *L v Canterbury District Law Society*. This is an instance where the types of concerns expressed in the LLA decision remain a relevant consideration in the absence of sufficient proof otherwise.

[38] More broadly, the respondent submits that the applicant’s contention that he has changed his life since his previous offending is unsupported by sufficient and adequate information. We come to that conclusion.

[39] The respondent submits that our decision in *Revill* is to be distinguished on the basis that the Tribunal heard from that applicant (Mr Revill) in considerable detail as to the circumstances of his offending. Furthermore, there was extensive written and then oral evidence before us of how the applicant had reformed his ways and would be a fit and proper person to hold a salesperson’s licence. That is so.

[40] The respondent also submits that the present applicant is in a different position to Mr Revill given that he appears to attempt to minimise his role in his most recent offending (burglary of 20 June 2001) and has not put before the Tribunal *“sufficient”* and *“adequate”* information that he is a fit and proper person to hold a licence notwithstanding his convictions. We agree.

[41] Also, the applicant has not pointed to the sorts of concrete changes Mr Revill did. As the High Court put it in *L v Canterbury District Law Society*, an applicant must establish affirmatively that since the offending he or she has *“so far amended his [or her] ways and character that he [or she] is now a fit and proper person ...”*

[42] Instead, the applicant has attached to his submissions character references in relation to his Certificate of Approval as a personal guard, a property guard, and crowd controller. Importantly, character references for a Certificate of Approval for a job as, effectively, a security guard are concerned with different personal qualities than are required to be a real estate salesperson where personal, professional, and business fitness, propriety, transparency, and honesty are hallmark requirements. The applicant’s references are from people who know of the applicant in his role working at a nightclub and are in the context of an application for a certificate related

to such environs. They are not people who can properly attest to the applicant's fitness and propriety to hold a salesperson's licence within the scheme of the Act.

[43] The applicant further invites us to undertake our own inquiries of, for example, Detective Prosser, or of his potential employer at Ray White, with whom the applicant "cannot recall" whether his 1987 convictions were discussed. However, providing references prepared for another application and inviting us to make our own inquiries is not an approach consistent with the applicant's onus of satisfying us that he is a fit and proper person to hold a salesperson's licence by providing "sufficient" and "adequate" information. Such an approach is far removed from the situation in *Reville*.

Final Response for Applicant

[44] Counsel for the applicant emphasised that the applicant made no secret of his convictions and included a copy of his previous convictions with his application.

[45] Counsel also stresses that the applicant's referees, Messrs McGuigan and Croucher, have both sworn affidavits in which they each confirm that, notwithstanding the applicant's convictions, they consider him to be a suitable person to hold a Real Estate Agents licence.

[46] It is also emphasised that Mr Mason's conviction in 2006 was quashed so that he was not convicted by a jury, as the entire trial was a nullity. That is correct. His appeal was dismissed based on the inaccuracy of the prosecutor's final address; but the matter was remitted for rehearing at which the trial judge discharged Mr Mason under s.347 without putting the issue to the jury. A discharge under s.347 has the same effect as an acquittal. The matter is currently the subject of civil proceedings (*Mason v Glover* [2012] NZHC 28150 and Clifford J summarises the case as follows:

"[5] Mr Mason's conviction was based on him having accepted a controlled delivery of a package containing pseudoephedrine to an address in Christchurch. Mr Mason was, he says, at the time expecting a courier delivery of an EFTPOS machine to be used at a nightclub where he had damaged a similar machine. He therefore accepted the controlled delivery because he thought it was the EFTPOS machine being delivered to him. This was evidenced by him saying to the delivery person, a Customs officer posing as a courier driver, "Eftpos machine?" at the time of delivery. Mr Mason alleges that he informed Mr Glover of these matters and that Mr Glover was to obtain confirmation from EFTPOS New Zealand that, in fact, Mr Mason had ordered and was expecting delivery of an EFTPOS machine. Mr Mason understood that EFTPOS had provided documentary confirmation of that fact to Mr Glover. As matters transpired, Mr Glover never received that confirmation and Mr Mason says Mr Glover acted in breach of his retainer and negligently in not informing Mr Mason of that fact or properly advising him of the significance of the absence of that evidence, and of Mr Mason himself not giving evidence, at his trial.

[6] Mr Mason says that when that evidence was put before the District Court on his retrial, it procured his discharge under s.347."

[47] Counsel for the applicant submits that far from an absence of evidence, the case for the applicant's reformed character is overwhelming. It is put that the Registrar has attempted to minimise the significance of the applicant's certificate of

fitness as a security guard and that Mr Mason has been through a detailed vetting process, including police interviews, to qualify as a personal and property security guard. Counsel puts it that the only concern raised by the Registrar was with the applicant's access to private households which is what the applicant's certificate of fitness allows; and there was scope to impose conditions on his Certificate of Approval but none was imposed.

[48] Counsel added that having most recently worked at a car yard, the applicant's desire is to pursue a career in real estate; and that he is attempting to remove himself from the environment which is the subject of much of the Registrar's criticism.

[49] Counsel stressed that the issue before us is whether Mr Mason is fit and proper to hold a real estate agents licence, and that he has passed all necessary qualifications and there is no criticism of his technical abilities.

[50] Counsel also put it that, as to his character, Mr Mason has received glowing reports from the individuals within the industry in which he used to work. He has also provided references from two professionals within other industries who are all able to speak to the applicant's propriety, transparency, integrity and honesty. In addition he has been issued a certificate of fitness as a security guard.

[51] It is also put that a certificate of fitness to work as a security guard would not be issued to someone who lacked integrity, transparency, honesty, or was considered a threat to property; and while Mr Mason has not provided character witnesses from within the real estate industry, it is important not to put the horse before the cart.

[52] Counsel for the applicant submits that, in all the circumstances, we can be satisfied that Mr Mason is a fit and proper person to hold a salesperson's licence.

Our Conclusions

[53] In view of the applicant's past convictions and of what has been put before us about him, we think that his integrity, trustworthiness, and general rectitude of character are questionable at least in terms of being entrusted with real estate agency work. On the balance of probabilities, we are not satisfied that the applicant is a fit and proper person to hold a real estate agents licence.

[54] We said in *Revill* that each application must be decided on its own facts. Importantly, in that case we decided there was material showing that (on the balance of probabilities) an applicant with a poor past history had changed his life and, as such, is a fit and proper person to hold a salesperson's licence at the time of application.

[55] We consider that to issue the present applicant a real estate salesperson's licence would run counter to the purpose of the consumer-focused Act and its high expectations for licences as seen, for example, in the requirements of the licensing regime.

[56] Accordingly, at this stage it seems to us that the Registrar's decision was correct and that the applicant has not satisfied us that he is a fit and proper person to hold a salespersons' licence. This would mean that this appeal be dismissed.

[57] However, despite s.112(3) which we set out above, we have misgivings about disposing of this matter “*on the papers*”, even though it has been put before us on that basis. If the applicant wishes to be heard, we direct the Registrar to arrange a short fixture at which we can hear from the applicant in person, with any further relevant and available evidence, and counsel can make further submissions if they wish to do so. If the applicant does not advise the Registrar of his wish to be heard within 15 working days of this decision, this appeal/review is then dismissed.

[58] 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 J Gaukrodger
Member

Mr G Denley
Member