

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2013] NZREADT 72

READT 023/13

UNDER

Sections 92 and 115 of the Real Estate Agents Act 2008

BETWEEN

**REAL ESTATE AGENTS
AUTHORITY (CAC 20007)**

Prosecutor/Applicant

AND

BRENDAN MARSHALL

Defendant/respondent

MEMBERS OF TRIBUNAL

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

HEARD ON THE PAPERS

DATE OF INTERIM DECISION (ON THE PAPERS) 16 July 2013

DATE OF THIS DECISION 21 August 2013

COUNSEL

Mr M J Hodge and Ms S G J Locke for prosecutor
The defendant on his own behalf

**DECISION OF INTERIM SUSPENSION PURSUANT TO s.115
OF THE REAL ESTATE AGENTS ACT 2008**

The Applicant Before Us

[1] On 16 July 2013 we issued a decision [2013] NZREADT 61 in relation to the prosecutor's application for suspension of the defendant's real estate agent's licence no. 10013750 pending the outcome of a hearing for a substantive charge of misconduct which we set out in that decision. The point of that decision was to comply with s.115 of the Real Estate Agents Act 2008 ("the Act") dealing with suspension of licence pending outcome of a hearing and, in particular, to give notice to the defendant of our intention to suspend his licence pursuant to s.115(2) of the Act.

The Stance of the Parties

[2] In response to our decision of 16 July 2013 the defendant advised us of his view, that an interim suspension order should not be made; and that he was currently not employed and, therefore, in his view he poses no risk.

[3] We subsequently set down a telephone conference for 30 July 2013. The defendant advised us that he refused to attend that telephone conference and he did not. At that telephone conference, we directed that the charge is to be heard by us on 4 October 2013 and we made consequential timetabling orders. In relation to the interim suspension application, our Chairman queried whether an interim order is necessary in light of the defendant's advice that he is not currently employed and does not wish to take part in our process. However, since then the defendant had advised our Registry that he now wishes to take part in, and defend, the hearing of the charge.

[4] Mr Hodge puts it that there was an inference that the defendant had given up on being part of the real estate industry but it now appears that is not so. Accordingly, Mr Hodge submitted that as long as the defendant holds a licence, he is entitled to carry out real estate agency work if employed or engaged by an agent; and although not currently employed, there is nothing to prevent this from occurring. This means there is a potential risk to consumers because the defendant currently holds a real estate agent's licence. Also as Mr Hodge points out, conversely, given the defendant's advice that he is not employed, there could be no prejudice to the defendant in an interim suspension order being made against him as sought by the Authority unless, of course, the defendant does wish to carry out real estate agency work again pending the substantive hearing before us now fixed for 4 October 2013.

Our Decision

[5] Accordingly, pending the outcome of the substantive hearing, we have now decided to suspend the defendant's licence for the following reasons:

- [a] The defendant has been charged under s.91 of the Act and we consider that, having regard to the interests of the public, it is necessary or desirable to suspend his said licence;
- [b] We consider that the public needs protection in the light of the serious nature of the charge against the defendant based on various alleged frauds and including the creation and use of fraudulent invoices to obtain money from the company accounts of his employer, Hastings McLeod Ltd; and the application of those funds to his personal use. We detail the charges in our said decision 6 July 2013 [2013] NZREADT 61.
- [c] It is in the public interest to ensure that real estate agents maintain high standards of honesty and integrity.
- [d] We have followed the procedures required by and set out in s.115 of the Act.

[6] We also refer to and incorporate herein the content of our said decision herein of 16 July 2012 referred to above as [2013] NZREADT 61 which, inter alia, sets out the detail of the charges against the defendant.

Outcome

[7] Accordingly, as from and including 22 August 2013, the said licence of the defendant is suspended for a period of nine months or until the hearing of the charge under s.91, whichever date is the earlier. We record that the defendant has a right of appeal to the High Court under s.116 of the Act.

[8] This decision constitutes written notice to the defendant, and to the Registrar of the prosecutor, under s.115(3) of the Act of our decision to suspend the defendant's said licence.

[9] 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

Mr J Gaukrodger
Member