

**BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

Decision No: [2013] NZREADT 74

Reference No: READT 033/12

**IN THE MATTER OF**

a charge laid under s.91 of the Real Estate Agents Act 2008

**BETWEEN**

**REAL ESTATE AGENTS  
AUTHORITY (CAC20006)**

Prosecutor

**AND**

**KEVIN STEVENSON**

Defendant

**Members of the Tribunal**

Ms K Davenport QC – Chairperson  
Mr G Denley – Member  
Ms N Dangen – Member

**SUBSTANTIVE DECISION** issued 5<sup>th</sup> July 2013

**HELD** on the papers

**COUNSEL**

Mr Stevenson in person  
Ms MacGibbon for the Real Estate Agents Authority

**DECISION OF THE TRIBUNAL ON PENALTY**

***Background***

[1] On 5<sup>th</sup> July 2013 Mr Stevenson was found guilty of two charges of misconduct s 73(a) and one charge of unsatisfactory conduct s 73(b). In that decision the Tribunal invited submissions from Mr Stevenson and the CAC on penalty. The CAC have filed submissions. The Tribunal have read these submissions. Mr Stevenson has not filed any submissions.

[2] The principles of sentencing are:

*A penalty must fulfil the following functions. They are:*

a) *Protecting the public*

*Section 3 of the Real Estate Agents Act provides that this is one of the purposes of the Act.*

b) *Maintenance of professional standards*

*This was emphasised in Taylor v The General Medical Council<sup>1</sup> and Dentice v The Valuers Registration Board<sup>2</sup>.*

c) *Punishment*

*While most cases stress that a penalty in a professional discipline case is about the maintenance of standards and protection of the public there is also an element of punishment – such as in the imposition of a fine or censure. See for example the discussion by Dowsett J in Clyne v NSW Bar Association<sup>3</sup> and Lang J in Patel v Complaints Assessment Committee<sup>4</sup>.*

d) *Where appropriate, rehabilitation of the agent must be considered – see B v B<sup>5</sup>.*

In the Tribunal's decisions of CAC v Khan [2011] NZREADT 11, CAC v Raj [2013] NZREADT 52 and CAC v Ferguson [2013] NZREADT 30) these principles are explored in more detail.

### **Discussion**

[3] The conduct complained of by Mr Stevenson took place in 2011. Accordingly Mr Stevenson's conduct falls to be considered under the penalty provisions of the Real Estate Agents Act 2008. The Tribunal has available to it those penalties which are set out in sections 110 and 93.

[4] The penalties which are relevant to the charges on which Mr Stevenson have been found guilty are:

- [a] An order cancelling Mr Stevenson's licence (s 110(2)(b));
- [b] An order suspending Mr Stevenson's licence (s 110(2)(c));
- [c] An order that Mr Stevenson pay a fine up to \$15,000 (s 110(2)(f));
- [d] An order for compensation (s 110(2)(g)).

[5] In respect of the finding of misconduct, the Tribunal may make orders under s 93. Relevant penalties which could be imposed are:

- [a] An order censuring or reprimanding Mr Stevenson (s 93(1)(a));
- [b] An order that the licensee apologise to the complainant (s 93(1)(c));
- [c] An order that the licensee undergo further training or education (s 93(1)(d));
- [d] An order that the licensee reduce, cancel or refund fees (s 93(1)(e));
- [e] An order that the licensee rectify any error or omission (s 93(1)(f)).

<sup>1</sup> [1990] 2 All ER 263

<sup>2</sup> [1992] 1 NZLR 720

<sup>3</sup> (1960) 104 CLR 186 at 201-202

<sup>4</sup> HC Auckland CIV 2007-404-1818; Lang J; 13/8/07

<sup>5</sup> HC Auckland, HC 4/92 6/4/93; [1993] BCL 1093

[6] These orders are also available for the more serious charge.

[7] The charges that Mr Stevenson faced and defended were serious charges of forgery and seriously incompetent real estate work. In summary Mr Stevenson was found guilty of:

- [a] Forging the signature and initials of the complainants on the commission rate and disclosure form;
- [b] Seriously incompetent or negligent real estate agency work including an open ended condition in an agreement that the sale was subject to a builder's approval;
- [c] Failure to record an acknowledgement in the agreement by the purchaser that they accepted that two bedrooms were non-council compliant;
- [d] Failure to disclose to the purchasers that Mrs Beer was an employee of the agency (in breach of s 136 of the Act); and
- [e] Preparing a further purchase agreement for the purchaser without making the agreement conditional upon the termination of the first agreement with Mr and Mrs Beer.

[8] Mr Stevenson was also found guilty of unsatisfactory conduct in respect of his failure to communicate regularly and in a timely manner with the Beers and failing to keep adequate records.

### ***Real Estate Agents Authority (REAA) submissions***

[9] The REAA submits that the Tribunal should cancel Mr Stevenson's licence. The REAA submits that the dishonesty for which Mr Stevenson was found guilty was serious dishonesty which can only be met by an order of cancellation.

[10] The Tribunal must impose the least punitive/restrictive penalty on Mr Stevenson which is also commensurate with the dual obligations of protection of the public and maintenance of standards. The penalty must also be proportionate to the charge.

[11] Rehabilitation is an important consideration for the Tribunal. However, in the absence of any submissions from Mr Stevenson, the Tribunal does not have any information on which it could consider rehabilitation. The forgeries are serious and deserving of condemnation. Further, Mr Stevenson also showed himself to lack a basic understanding of how to draft contracts. We would have considered some re-education essential for Mr Stevenson had he continued to work as an agent. However in the absence of any information from Mr Stevenson and the severity of the forgery, we consider the most appropriate penalty is to cancel Mr Stevenson's registration.

[12] We do not impose any fine upon Mr Stevenson as we have no information about his financial circumstances except some vague evidence that he gave at the hearing that he was employed as a truck driver.

[13] The REAA submitted that an order for payment of Mr and Mrs Beer's legal expenses relating directly to the forgery pursuant to s 110(2)(g) was appropriate. We

have considered these invoices and consider it is appropriate that Mr Stevenson be ordered to pay to Mr and Mrs Beer the sum of \$1,683.73 GST inclusive in compensation for the additional legal costs which they were required to pay in respect of the forgery.

**Tribunal's Decision**

[14] The Tribunal therefore impose the following penalty on Mr Stevenson:

- [a] Mr Stevenson's registration is cancelled;
- [b] Mr Stevenson is ordered to repay to Mr and Mrs Beer the sum of \$1,683.73 GST inclusive in compensation for the additional legal costs.

[15] The Tribunal draw to the parties' attention the right of appeal to the High Court contained in s 116 Real Estate Agents Act.

**DATED** at AUCKLAND this 30th day of August 2013

---

Ms K Davenport QC  
Chairperson

---

Mr G Denley  
Member

---

Ms N Dangen  
Member