

## **BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

[2013] NZREADT 86

READT 034/12

**IN THE MATTER OF** appeal under s.111 of the Real Estate Agents Act 2008

**BETWEEN** **STEPHEN HUNT** of Christchurch,  
Complainant Purchaser

Appellant

**AND** **THE REAL ESTATE AGENTS  
AUTHORITY (CAC 10056)**

First Respondent

**AND** **ROSEMARY (ANNIE) SMITH** of  
Rangiora, Real Estate Agent

Second Respondent

### **MEMBERS OF TRIBUNAL**

Judge P F Barber - Chairperson  
Mr G Denley - Member  
Mrs C A Sandelin - Member

### **HEARD ON THE PAPERS**

**DATE OF DECISION:** 14 October 2013

### **REPRESENTATION**

No appearance from appellant  
Ms J Pridgeon, counsel for the Authority  
Mr J Waymouth, counsel for second respondent

### **DECISION OF THE TRIBUNAL ON STRIKE OUT APPLICATION**

[1] On 6 June 2012 the appellant (the complainant) appealed to us against Complaints Assessment Committee 10056's 7 May 2012 decision finding that the licensee, Rosemary (Annie) Smith, engaged in unsatisfactory conduct. The appellant sought that we find the licensee guilty of misconduct.

#### ***Background***

[2] The licensee sold the appellant's previous Christchurch property in August 2010.

[3] In the same month, the appellant bought another property, at 1299 Courtenay Road, Kirwee, Christchurch, for \$450,000. Prior to possession date in October 2010, the Christchurch region was affected by an earthquake (in September 2010).

[4] In November 2010, the licensee contacted the complainant to tell him that she had persons interested in buying in the property's area. No agency agreement was entered into and no sale then took place.

[5] In February 2011, another major earthquake struck the Christchurch region. The licensee contacted the complainants again. At this stage, the licensee was employed by Devlin Real Estate Ltd, Rangiora. The appellant entered into a listing agreement with the agency for one week only and relating specifically to the previous prospective purchasers.

[6] The licensee did not provide a written market appraisal for the property nor details of comparable sales in the area. In April 2011, after numerous telephone calls and text messages between the prospective purchasers, they signed a sale and purchase agreement for the property with the appellant as vendor. The agreement initially did not specify a possession date, but one was later added as 24 May 2011. That date was subsequently changed to 1 July 2011. Neither change was initiated by the complainants.

[7] The appellant subsequently wished to void the contract because he believed the sale price was well below market value.

### ***Discussion on Current Status of this Appeal***

[8] This appeal was filed with the Tribunal's registrar on 6 June 2012. Throughout this year this registry has endeavoured to make contact with the appellant.

[9] He had been contacted on 28 January 2013 about a teleconference then scheduled (regarding this matter) for Wednesday, 30 January 2013 at 10.20 am and provided with our appropriate practice note to facilitate that; but that proposed 30 January 2013 teleconference as aborted because the appellant did not confirm his attendance.

[10] On 5 March 2013 he was sent an email to arrange his attendance at a telephone conference then scheduled for Monday, 18 March 2013 at 10.30 am. He was again provided by the Registry with a practice note to assist him.

[11] The appellant has simply taken no steps to continue with this appeal nor has he responded to the registry's efforts at communication and procedure.

[12] On 18 March 2013, counsel for the second respondent licensee applied that we strike out the appeal *"in the face of clear non-communication tantamount to failure or refusal to communicate by the appellant and pursuant to the provisions of s.105(2) (application of natural justice) of the Real Estate Agents Act 2008 and, in particular, with r.15 of the Real Estate Agents (Complaints and Discipline Regulations) 2009 (regarding failure to appear)..."*

[13] Mr Waymouth also put it that there has been a failure by the appellant to prosecute this appeal in a fair and timely manner. We agree.

[14] On a number of occasions the Registry has arranged that the appellant be advised that he must participate in the timetable process towards a fixture or we shall need to strike out the appeal for non-prosecution. We are satisfied that message has been sent to his various points of contact.

[15] In the circumstances outlined above, we hereby dismiss this appeal for non-prosecution.

[16] 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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Mr G Denley  
Member

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Mrs C A Sandelin  
Member