

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2013] NZREADT 94

READT 034/13

IN THE MATTER OF

an application to review the Registrar's decision pursuant to s.112 of the Real Estate Agents Act 2008

BETWEEN

**JAMES CHARLES MORRIS
PARLANE**

Applicant

AND

**THE REGISTRAR OF THE REAL
ESTATE AGENTS AUTHORITY**

Respondent

MEMBERS OF TRIBUNAL

Judge P F Barber - Chairperson
Mr J Gaukrodger - Member
Ms N Dangen - Member

HEARD at HAMILTON on 25 September 2013

DATE OF DECISION 4 November 2013

REPRESENTATION

The applicant on his own behalf
Mr L J Clancy for the respondent Registrar

DECISION OF THE TRIBUNAL

Introduction

[1] On 11 June 2013 the Registrar of the Real Estate Agents Authority declined James Charles Morris Parlane's application for a salespersons licence. The applicant seeks the Tribunal's review of the Registrar's decision pursuant to s.112 of the Real Estate Agent's Act 2008 ("the Act").

[2] For the respondent Registrar, Mr Clancy submits that she was correct to decline to grant the applicant a salespersons licence on the basis that he was not a fit and proper person having regard to:

- [a] previous disciplinary findings against the applicant by the New Zealand Lawyers and Conveyancers Disciplinary Tribunal for misconduct and unsatisfactory conduct in a professional capacity which led to his being struck off the roll of Barristers and Solicitors; and

- [b] the applicant's failure to satisfy the Registrar that he has a prospective employer willing to employ him as a real estate salesperson and who will undertake to support him in that role on a day to day basis.

Registrar's Decision

[3] In her declinature letter of 11 June 2013, pursuant to s.43(3)(a) of the Act, the Registrar found that the applicant was not a fit and proper person to hold a licence, as required by s.36(2)(c) of the Act. We consider that the Registrar followed fair and proper procedures and protocols.

[4] The Registrar noted that, at the objections hearing which she held, the applicant had acknowledged that he had allowed issues with his Law Society to get out of hand and that he could have dealt with that Society in a more professional manner.

[5] The Registrar also referred to a 26 May 2013 report (an extract is set out below) provided by the applicant from a clinical psychologist confirming that, during the period he was under investigation by the Waikato District Law Society, he was under immense stress and clinically depressed, and expressing the view that, should the applicant practice as a real estate salesperson, he would benefit from a mentoring relationship with a senior colleague.

[6] At that objections hearing, the Registrar discussed with the applicant recent decisions of this Disciplinary Tribunal and some cases in which we had determined that an applicant for a licence had demonstrated positive change and also had the appropriate support and supervision in place such that a licence could be granted.

[7] The Registrar then adjourned her consideration of the applicant's application for two weeks to enable the applicant time to provide evidence of the support structures he would have in place should he be granted a licence.

[8] On 13 May 2013 she received a letter from the applicant enclosing references from two retired ex-licensees who were willing to mentor the applicant should he be granted a licence. On 25 May 2013 the Registrar wrote again to the applicant advising that she was putting his application on hold until he could provide her with details of a real estate agent who was willing to employ him as a real estate salesperson and who would undertake to support him in such a role.

[9] However, on 31 May 2013 the applicant requested that the matter now be heard by this Tribunal.

[10] In her said decision letter of 11 June 2013, the Registrar noted that, on receipt of an application for a licence under the Act, the onus is on the applicant to satisfy the Registrar that the applicant is a fit and proper person to hold a licence. Referring to our decision in the case of *Reville v Registrar of the Real Estate Agents Authority* [2011] NZREADT 41, and the weight given by us in that case to the particular supervision and mentoring available to the applicant by his employing real estate agency, the Registrar was not satisfied that the applicant was a fit and proper person in the absence of a structured supervision and mentoring plan for him with a prospective employer. Accordingly, she declined the application.

This Tribunal's Enquiry on Review

[11] It is put that our enquiry on review is whether the applicant has satisfied the Registrar that he was a fit and proper person to hold a licence. In effect, does the applicant satisfy us of that? Each case is fact specific. It is for us to determine whether the applicant has satisfied the onus of showing he is a fit and proper person to hold a salesperson's licence with reference to any additional material. The standard proof is the balance of probability.

[12] This is clear from the language of s.36(2) which provides:

“36 Entitlement to licence

...

- (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.”*

[13] The following general principles are now well established in considering whether an applicant can satisfy us that he is (or she) a fit and proper person to hold a real estate salesperson's licence.

[14] 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) Limited v North Shore City Council* [2005] 2 NZLR 597 where the Court considered s.93 of the Resource Management Act 1991 which required the Council to be satisfied it had received adequate information to make a decision about notification of applications for resource consent. Section 94(2) of the Resource Management Act 1991 provided that the Council was not required to notify an application if, among other things, it was *“satisfied that the adverse effect on the environment of the activity for which consent is sought will be minor”*. Elias CJ Held:

“[23] The requirement that the consent authority must be “satisfied” that adverse effects on the environment are minor before it decides not to notify a resource consent application for a discretionary activity is a significant obligation. By contrast, when a substantive decision is made on the application for a resource consent for a discretionary activity under s.105, the consent authority is simply empowered to decide whether or not to grant the consent and on what conditions, after taking into account the considerations identified by the Act and in the context of the plan. Such decisions may be finely judged. That is not the approach required of the decision maker by s.94(2). The requirement that the consent authority be “satisfied” that adverse effects on the environment are minor is a pointer to additional conviction and the need for some caution.”

[15] Keith J held:

“[52] Significant in the basic requirements stated in ss 93(1) and 94(2) are the double emphasis on “satisfied”, the strongest decisional verb used in the Act, the etymology of “satisfy” (to do enough), and a standard meaning relevant in this context – to furnish with sufficient proof or information; to assure or set free from doubt or uncertainty; and to convince; or to solve a doubt, difficulty.”

[16] Blanchard J, with whom Richardson J concurred in a short judgment, held: “[108] *The information which the consent authority must have, in order that it can properly be “satisfied”, must be adequate for it to make two determinations under s.94(2).”*

The “Fit and Proper” Person Requirement under s.36 of the Act

[17] Section 36(2) is set out above:

[18] Section 37 prohibits people with certain conviction types from being licensed as salespersons, however, as we relevantly noted in *Revill* (supra) the “fit and proper person” test is wider than the absolute prohibition in s.37. We stated:

“[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.”

[19] 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 at 474 (HC): “... *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.”*

[20] In *Re Gazley* (HC WLG CIV-2011-485-1776 26 October 2011) the High Court remarked (dealing with a barrister and solicitor):

“[9] ... the focus of the Courts’ 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 applicant 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.”

[21] The authorities affirm that it is a significant step to deprive a person of a licence or status. However, as emphasised in *Re Owen* [2005] 2 NZLR 536 at [8] again dealing with admission as a barrister and solicitor, the primary consideration is that the Court must be satisfied, objectively, that the candidate is a fit and proper person. The judgment of the Court is made in the interests of the community, having regard for the profession.

[22] This principle is equally applicable to licensing decisions under the Act. The purpose of the consumer-focussed Act 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*” (refer s.3 of the Act)

[23] For consumers, real estate transactions are often the largest and most important they will enter into in their lives and, accordingly, can be stressful for all parties concerned. It is essential that consumers are able to rely on the professional conduct of licensees involved in such transactions. It is for this reason that the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 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.

[24] In *Revill* we noted the trust reposed in salespeople 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 ..."

[25] The scheme of the licensing regime for real estate agents, as found in Part 3 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). Issuing 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).

[26] Licences last for one year (s.46) and must be renewed (s.52) or they expire. The requirements for renewal of a licence substantively overlap with those for first applications and there is a further requirement for any prescribed continuing education (s.52(3)).

[27] Lastly, the details of licensees are recorded on the public Registrar of licensees (s.63). The details which must be recorded are fairly comprehensive (see s.66).

The Present Application To Us

[28] The applicant based his (in effect) appeal to us on the fact that he is a fit and proper person and that the Registrar had refused to apply her discretion in a fair and reasonable manner by:

- [a] predetermining the application based on historical information she had to hand concerning the applicant's previous professional convictions;
- [b] placing the application "*on hold*" until such time as the applicant could secure employment, which the applicant puts is offending against s.6 of the Act;
- [c] failing to provide the case law she referred to despite the applicant's request for copies or instructions on how to obtain it;
- [d] unjustified reliance on the *Revill* case;
- [e] refusing or failing to contact the personal referees whose details were supplied with the initial application, and failing or refusing to contact further referees who had specific industry experience;
- [f] conducting her objections hearing in a non-formal manner.

The Evidence of the Applicant to Us

[29] Essentially, the defendant asserts that his application to become a real estate agent has not been fairly looked at by the Registrar.

[30] He does not think that his issues with his Law Society, referred to further below, should be held against him. He seemed to be saying that at material times and,

presumably, on an ongoing basis he suffers from Asperger Syndrome so that he bears a difficult illness. As it happens, he has studied psychology and recognises that he has some issues with obsessiveness.

[31] He seems to be a man of many interests and much talent and, for example, restores vintage Ford motorcars and has talents at things mechanical as well as with the law. He seems to be a steady worker. He feels that his local Law Society have always been dismissive of his views and explanations.

[32] He puts it that his health has much improved in recent times and he needs a new career. He sees being a real estate salesperson licensee as a suitable option and he has easily completed the necessary education course for that. He emphasises that, in terms of s.50 of the Act which requires that salespersons be supervised, he would be working as a real estate agent under the direction and control of either a branch manager or an agent.

[33] He emphasises to us that he is well qualified to be a real estate agent having easily completed the necessary academic course and as a lawyer (with, of course a law degree) has much experience in conveyancing and ethics. He did not seem to accept our Chairman's suggestion that his terms for, and reluctance to, release of a mortgage as set out below in some detail constituted a clog on the equity of redemption, which most people would regard as a fundamental violation of part of common law (and a breach of s.97(2) of the Property Law Act 2007 (dealing with the equity of redemption)). He simply asserts "*the Law Society were after me*".

[34] To be fair to the applicant, it seems that with hindsight he can see that he was difficult in his dealings with the Law Society and was affected at material times by stress. He puts it that is all history and he has been dealt with and punished by the Law Society, three years have passed, and he is now a fit and proper person with excellent experience and education to be a real estate salesperson. He put it that among the things Law Society personnel did not like about him was his use of what he calls "*colourful language*" and which the Law Society regarded as abusive. In any case, he regrets his actions and puts it "*I am a friendly and easygoing character as long as I am not put under pressure*".

[35] Under cross-examination the applicant tended to give rather long, rambling, yet quick thinking answers to Mr Clancy's questions which, inter alia, covered details of his conduct as a lawyer which concerned his local Law Society. Mr Clancy put it to the applicant that the type of conduct which concerned the Law Society was very relevant to the type of work to be undertaken by a real estate salesperson. The defendant maintains such conduct was in order and in terms of his rights. He seemed to be saying that his Law Society had treated him "*corruptly*" and "*in a cheating manner*" and he denies that he was in any way belligerent or unprofessional towards the Law Society people.

[36] Insofar as he had suggested that there had been collusion (inter alios) between the Ombudsman and the Real Estate Agents Authority, he said he believed that to be true and that he was entitled to say so. He seems to be still asserting to us that the Registrar did not do her job and he put it that he is simply "*a forthright individual*".

[37] It was put to the applicant that he is unable to refer to a real estate firm which will employ him and supervise him in a regular manner. His response is that he cannot obtain such a position or job until he is issued with a real estate agents licence. He maintains that there are people who would take him on but not until he is licensed.

Respondent's Submissions on Application of Fit and Proper Person Test to the Applicant

[38] Mr Clancy submits that the Registrar was correct in declining the applicant's application on the basis that he was not a fit and proper person.

Previous Professional Convictions in Capacity as Lawyer

[39] Mr Clancy submits that the Registrar rightly took the applicant's previous professional misconduct into account in declining his application.

[40] The applicant has been found guilty of misconduct and unsatisfactory conduct in a professional capacity by the NZ Lawyers & Conveyancers Disciplinary Tribunal on 4 June 2010 and 22 July 2010 respectively. On 16 September 2010, that Tribunal made an order striking the applicant's name off the role of Barristers and Solicitors. The High Court declined the applicant's appeal against the order striking him off the roll. In the course of that comprehensive High Court decision, Cooper J stated:

"[103] In the decision on penalty, the Tribunal described Mr Parlane's conduct as unacceptable. It said that his refusal to release the mortgage unless Mrs R withdrew her complaint against the Law Society, and indemnified him for all his costs associated with the complaint was "extraordinary". The intervention of the District Court had been required to ensure that she received the discharge of mortgage, and Mr Parlane's various demands had been dismissed. The Tribunal considered that this was a serious breach of his responsibilities, and that it had caused significant distress and damage to Mrs R.

[104] The Tribunal's decision fell short of a finding that Mr Parlane had been dishonest. It may be that to characterise his behaviour as dishonest would not be accurate, although to make demands of a former client asserting entitlements which a practitioner must know he has no right to make must come close to dishonesty. Even if the behaviour is not so described, however, dishonesty is not a prerequisite for a finding that a practitioner is not a fit and proper person to be in practice. As the observations of Sir Thomas Bingham in Bolton indicate, short of dishonesty, conduct may fall so far below the required standards of integrity, probity and trustworthiness that a decision to strike off is justified."

[41] The judgments of that Tribunal and the High Court speak for themselves. But, in general terms, the following key features of the applicant's conduct are relevant:

[a] The applicant made disrespectful and discourteous statements to a self-represented person involved in a fencing dispute with one of his clients in a letter dated 4 June 2009 as follows:

(i) "You say that [the applicant's client] is the problem and that you have had trouble with her. My view is that you have lived in St Helliers too long and the thin air of the "heights" has got to your brain and you are now not able to think properly and reasonably. I have relatives with property there and they too suffer from the sort of snobbery that you exhibit ... I hasten to add that you may wish to take legal advice. The better advice for a person in your situation would be to see a psychologist and address your underlying personality issues."

- [b] The applicant wrongfully refused to discharge a mortgage granted to him by a Mrs [R] to secure an earlier personal loan, obstructed her solicitor's attempts to refinance and discharge the mortgage, and relied on his status as mortgagee to demand payments and concession from Mrs R to which he was not entitled. In particular:
- [i] He repeatedly declined to provide the file to Mrs R's counsel;
 - [ii] When a complaint was made to the Law Society, he declined to discharge the mortgage without Mrs R agreeing to withdraw the complaint and payment of various sums totalling \$5,212.50, which he claimed was due for legal services (the total comprised of a \$787.50 fee for preparing and attending to settlement, a \$675 fee for preparation of a discharge of the mortgage, a \$1462.50 fee for attending to other loan-related issues, and a sum of \$287.50 for unpaid bills previously rendered).
 - [iii] He wrote: a letter to Mrs R's counsel on 9 October 2008 expressing the view that any conflict of interest had been resolved by Mrs R changing solicitors, that he was embarking on litigation with the District Law Society and this would be at Mrs R's expense, and that a penal interest rate of 14 per cent would be charged if the loan was not repaid by 19 January 2009.
 - [iv] On 9 December 2008, he wrote to Mrs R's counsel that if any further correspondence was received he would require \$20,000 from Mrs R to hold as security for costs in litigation, stating "... *[i]f I am further out of pocket in any way whatsoever as a result of your miserable and unreasonable client telling tales on me when all I have tried to do is help her then she can expect that ultimately it will cost her more and more*". He also refused to let Mrs R's counsel come to his offices to inspect the file.
 - [v] In January 2009, he sent a further three invoices to Mrs R totalling \$2,925.
 - [vi] On 21 January 2009, he wrote to Mrs R's counsel warning that she would be denied entry to his offices and that police would be called to ensure she left without incident unless all his settlement requirements were attended to.
 - [vii] On 22 January 2010 Mrs R's counsel sent a restrained response recording Mrs R's desire to pay the amount secured by the mortgage together with costs related to the mortgage. In response, the applicant noted that he required, for settlement "*today*" the following:
 - [a] Confirmation from the Law Society that Mrs R had withdrawn her complaint against him.
 - [b] A deed signed by Mrs R that she will not complain further and that she is in default of her loan and mortgage.
 - [c] Settlement funds comprising \$36,015.56 + penalty interest of \$3,390.19 + penalty interest @ 17.24 per day of \$51.71-\$282.71 pay today amount, totalling \$39,174.76.
 - [d] Costs (previous bills \$2287.50, current bills \$2925, bills yet to be sent \$787.50, amount for today's attendances \$337.50).

[viii] Mrs R subsequently had to apply for a summary judgment before the matter was settled. That application was heard on 29 July 2009 and District Court Judge Wolff made it plain that:

1. There would be judgment for Mrs R.
2. The applicant had no right to withhold the discharge for unpaid fees which were not directly connected to the mortgage.
3. He had no right to seek reimbursement for his costs in respect of answering any Law Society complaints.
4. He had no right to charge penalty interest on the mortgage.
5. The penalty interest claimed was insupportable.
6. \$220 for photocopying costs was excessive.
7. Mrs R was entitled to solicitor and client costs and this should be deducted from the amount due under the mortgage.
8. A cross-claim that the matter be transferred to the Disputes Tribunal was inappropriate.

[c] In relation to Mrs R's complaint, the applicant refused to comply with the requirements of the Standards Committee that he produce the relevant files and records despite written notifications to do so, thereby obstructing the Standards Committee in the lawful exercise of its statutory functions and powers;

[d] Also in relation to Mrs R's complaint, the applicant communicated in writing with the Standards Committee in an unprofessional and belligerent manner, thereby obstructing the Standards Committee in the lawful exercise of its statutory functions and powers, e.g.

[i] He wrote *"I note the tyranny of the wbopdls and its incompetent officers comes to an end tomorrow ... I note that it is due only to the incompetence and cheating behaviour of those officials that the Government has seen fit to legislate them out of existence ... I trust the Law Society that replaces yours, will not employ such unprofessional cheats as the ones that your supposed law society previously employed to bring bogus ill conceived prosecutions ... I look forward to these incompetent practitioners being kept in the cage that they belong in so that they will not inflict harm on their colleagues in the future. It is with great pleasure that I do not need to now fund the excesses and incompetence of the wbopdls"*.

[ii] On 1 June 2009, the applicant further wrote to the Society noting that the files were required for his defence of proceedings against Mrs R, and would not be made available until these were resolved, and that all Law Society officers were warned to stay off his property, pursuant to the Trespass Act 1980.

[e] In relation to a former client, DM, in October 2008 he had communicated in writing with the Standards Committee in an unprofessional and belligerent manner, thereby obstructing the Standards Committee in the lawful exercise of its statutory functions and powers. He had written:

- [i] *“You are really scraping the barrel now Mr Dixon”.*
 - [ii] *“If this matter goes any further the wopdls and the NZLS will be sued. This will simply be added to the list of cheating and tortious behaviour undertaken by them. Your flagrant waste of members money has been well and truly noted.”*
 - [iii] *“You continue to pretend ignorance or a complete lack of understanding over the mandatory requirement to investigate complaints”.*
 - [iv] *“You latest letter is outrageous. It deserves an outrageous [sic] response. Here it is. Firstly, Go and jump in the lake ... Someone needs to put you in your place Mr Dixon ... Your letter is responded to at the same level as you communicate. In case there is any confusion, this is my normal friendly tone of correspondence when I deal with what I assess as cheating people on the other end. Cheats get this response.”*
 - [v] *“I have yet to see anything that gives you authority to investigate these matters under the new Act. Where is your Noddy badge, saying that you are the person entitled to investigate?”*
- [f] In relation to a former client, ABV, during February to June 2009 he communicated in writing with the Standards Committee in an unprofessional and belligerent manner, thereby obstructing the Standards Committee in the lawful exercise of its statutory functions and powers. He had written:
- [i] *“I suggest that there are really only two lawyers in New Zealand able to help [ABV]. One of these is Michael Dixon and the other is Jon Olphert. I hasten to add that both should be in Springhill Prison with his client. Perhaps when they all end up there, Mister Pyke can go and visit them”.*
 - [ii] *“I will be pleased to agree to a re-assignment based on a breakdown of communication between the complainant and myself and now give the great Kiwi suggestion in relation to this file.”*
 - [iii] *“Your behaviour in this regard can only be understood to be further cheating as you fail to have a proper basic understanding as to what a hearing is or what Justice might be. Clearly without that basic understanding you are not fit to practice law and I seek an order accordingly ...”*

[42] Mr Clancy submits that the real estate industry is one which requires its agents to act professionally at all times, often in situations of great stress. He puts it that the Registrar’s concern, that the applicant may be unnecessarily confrontational or unprofessional to the detriment of consumers and the industry’s reputation, is merited on the facts; and that the Registrar was correct to find that the applicant is not a fit and proper person having regard to his previous history of professional misconduct, the lack of a support structure, and his continued concentration on perceived slights and unfairness rather than substantive issues.

The Need for a Potential Employer Willing to Provide a Support Structure to the Applicant

[43] In declining the application, the Registrar took into account that the applicant did not have a prospective employer willing to employ him as a real estate salesperson and who would undertake to support him in that role.

[44] This was a relevant factor in the *Revill* decision. However, the respondent notes that this is just one factor that could be considered by the Registrar. The relevant test remains whether the Registrar is satisfied that the applicant is a fit and proper person to hold a licence.

[45] It is submitted for the Registrar that, in giving significant weight to this factor and in allowing time for the application to try and obtain day to day mentoring and supervision, she was not using delay as a tactic as the applicant alleges but was, in fact, going out of her way to facilitate the applicant's application. It is put that this is particularly so, in view of the applicant's previous history of professional misconduct and his psychologist's belief that he would benefit from a mentoring relationship with a senior colleague to obtain profession-specific advice.

[46] It is further submitted for the Registrar that her concern about mentoring and supervision would not give rise to any s.6 illegality under the Act. That section states that a person may not carry out real estate agency work unless licensed to hold himself (or herself) out to the public as being ready to carry out such work. The Registrar was not asking the applicant to do this. She was merely requesting that he seek out prospective employers who would be willing to facilitate the applicant's day to day mentoring and support in the event that his application was successful.

[47] We agree with her view that, at a minimum, in terms of the background set out above, any employer would have to put support structures in place to minimise risk to the public of the applicant engaging in the kind of inappropriate behaviour he has in the past. This is much more than the usual kind of supervision required.

Provision of Case Law

[48] The Registrar is not required to supply the applicant with case law, which is available on the Tribunal's website. In any event, a copy of the *Revill* case was given to the applicant with the Registrar's letter to him of 11 June 2013. However, it is not the detailed decision in *Revill* itself which was important in this context, rather than the need for the Registrar to be satisfied that the applicant is a fit and proper person, taking into account any available support structures and processes.

Contacting Referees/Informal Nature of Objections Hearing

[49] The Registrar is not obliged to contact the referees provided by the applicant. Further, it is clear from her decision that she has had regard to the references provided by the two retired ex-licensees who are willing to mentor the applicant.

[50] The applicant objects to the informal nature of the objections hearing, but we consider that the requirements of s.42 of the Act were complied with in that the Registrar:

- [a] appointed a time and place for hearing the application and objection as soon as practicable;
- [b] gave the applicant and the objectors at least 14 days' notice of the hearing;

- [c] heard the applicant;
- [d] considered the evidence put before her, including the written submission in response provided by the applicant under s.41.

[51] The key point is that the applicant was given every opportunity to be heard.

Final Submissions of the Applicant

[52] The applicant asks us to assess him as he now is and not as things were three years ago when he was having troubles with his District Law Society as described above. He says he is now in a different and much better frame of mind and that the observations made about him by the High Court Judge do not now apply, were unnecessarily made, and he (the applicant) is entitled to say what he has said.

[53] The applicant submits that there is no issue as to his honesty, he has no criminal record nor do any of his Law Society issues involve dishonesty, and that he is fit and proper to be a real estate agent. He accepts that in 2010 he could be regarded as “*belligerent*” but, due to the assistance of his psychologist, he has made a significant recovery in terms of his state of mind but says that Asperger Syndrome causes him “*to not read signs of indications from people*”. He would accept a condition on a real estate agent’s licence that he continue with regular psychological treatment.

[54] The applicant maintains that he was perfectly entitled to be involved in the dealings referred to above with the Ombudsman, the Privacy Commissioner and others, apparently in order to find out who was complaining about him. He seems to be now saying he did not believe he was belligerent at material times with such people. In terms of the allegation that he referred to the Authority as being “*duplicitous*” he seemed to be saying that he meant that it kept requiring too many duplicates and he was simply seeking economy over his expenses. He kept asserting that his local Law Society had been dismissive and unhelpful to him for many years and would never consider settlement talks with him or arranging mentoring of him, but held only the attitude that he should be prosecuted.

Our Views Overall

[55] We conclude that the Registrar has correctly decided on the available evidence that the applicant is not a fit and proper person to hold a real estate salesperson licence.

[56] As covered above, as a lawyer he failed to identify a conflict of interest situation with a client whom he should have referred to independent legal advice. He improperly refused to discharge a mortgage when tendered repayment to him by that former client. That led to a High Court Judge making disparaging remarks about him, although there did not seem to be dishonesty on the applicant’s part. It is fundamental that any real estate salesperson have sound ethics and there must be no doubts about that.

[57] It is concerning that there are various correspondences and communications which display quite some belligerence on the part of the applicant. That would be an unfortunate trait in a real estate salesperson. Such persons might easily become embroiled in disputes with consumers, their principals, other agents, and members of the public. Many of the responses referred to above by the defendant, in terms of his problems with the Law Society and clients, indicate that he reacts to issues belligerently and unprofessionally, and obsessively insists on what he regards as his rights.

[58] The Registrar was correct to see the need for consumer protection in terms of the character of the applicant.

[59] Having said all that, the 26 May 2013 report from the applicant's clinical psychologist provides important context. Part of that report reads:

"When Mr Parlane presented in September 2010 he was under immense stress, and had been so for about six years (the time the Law Society took to investigate the complaints before them). It was clear to me that Mr Parlane was clinically depressed, and that depression had impaired his judgment especially with regard to interactions with the Law Society. Our work together has addressed the depression, and Mr Parlane has made a good recovery.

I also diagnosed Mr Parlane with Asperger syndrome, a condition that impacts on the person's verbal and non-verbal communication, their social and emotional skills, and their behavioural flexibility. This explained Mr Parlane's personal style, why he had made such strong impression on me so many years earlier, and why opinions on him were so contrasting. Although Asperger syndrome is a life-long condition, many adults with Asperger syndrome manage the symptoms well. I know people with Asperger syndrome who are successfully working as lawyers, town planners, medical specialists, computer specialists, university lecturers, musicians, primary school teachers and gardeners. Accordingly, my work with Mr Parlane has also covered assisting him to understand Asperger syndrome, learn how it affects his functioning, and to develop strategies to manage himself more effectively. Mr Parlane's progress in this area has been very pleasing.

Alongside stress, undiagnosed depression, and undiagnosed Asperger syndrome, Mr Parlane was also medically unwell but did not realise this. Since we started to work together he has been diagnosed with hypertension, diabetes, and a heart condition. These conditions are now managed by Mr Parlane and his doctors, and he presents in a much better state. I suspect, however, that undiagnosed health problems contributed significantly to the stress that Mr Parlane was experiencing leading up to September 2010.

Moving on from sources of stress, Mr Parlane demonstrates motivation to learn and take on responsibility. Indeed since I have been working with him I believe that Mr Parlane has successfully completed one Masters level psychology course at university, training in mediation, food handling, first aide, and managing licensed premises. He also manages several residential properties that he owns, and based on our conversations, appears to be a good landlord, ensuring that the homes are well maintained and also that the tenants adhere to their responsibilities."

[60] We are conscious that a cause of the misconduct of the applicant referred to above seems to be illness rather than concerning character.

PRESENT OUTCOME

[61] Possibly, if the applicant could satisfy the Registrar at some stage that he can be employed as a real estate agent on a basis involving much supervision and mentoring, a licence could be granted to him. Were that to happen he would, in effect, be on trial for a year until his licence needed renewal. However, at this point and in terms of the evidence and argument put to us, we find that the applicant has not satisfied us in terms of s.36(2)(c) that he is a fit and proper person to be licensed as a real estate agent.

Accordingly, we confirm the decision of the Registrar and dismiss this application to review.

[62] 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

Ms N Dangen
Member