

**BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

[2014] NZREADT 100

READT 031/14

**UNDER**

Sections 92 and 115 of the Real Estate Agents Act 2008

**BETWEEN**

**REAL ESTATE AGENTS  
AUTHORITY (CAC 20005)**

Prosecutor/Applicant

**AND**

**ALAN MORTON-JONES**

Defendant/Respondent

**MEMBERS OF TRIBUNAL**

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

**HEARD ON THE PAPERS**

**DATE OF NOTICE OF INTENTION TO INTERIM-SUSPEND LICENCE –**  
24 September 2014/[2014] NZREADT 74

**DATE OF THIS DECISION** 16 December 2014

**COUNSEL**

Ms J MacGibbon for prosecutor  
The defendant on his own behalf

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

***The Application Before Us***

[1] On 24 September 2014 we issued a decision [2014] NZREADT 74 on the prosecutor's application for suspension of the defendant's real estate agent's licence no. 10016512 pending the outcome of a hearing for a substantive charge of misconduct 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 of a charge and, in particular, to give notice to the defendant of our intention to suspend his licence pursuant to s.115(2) of the Act.

[2] The essence of the charges of misconduct against the defendant is that, allegedly, he has repeatedly short-paid property-management rental monies to at least three of his clients over approximately a three year period.

### ***The Stance of the Parties***

[3] In response to our decision of 24 September 2014, the defendant advised us of his view that an interim suspension order should not be made; and that, in his view, he poses no risk. He helpfully, supplied a five page letter dated 8 October 2014 covering his reasons why we should not order an interim suspension of his said licence.

[4] Essentially, the defendant denies the allegations from the Authority. He adds that his company Rodney Real Estate Ltd does not now own a property rental management business “*so that there are no funds at public risk*” as he puts it. He says that Rodney Real Estate sold its property management business two and a half years ago.

[5] He also submits that the complaints against him (set out in our 24 September 2014 decision) have “*nothing whatsoever to do with the Real Estate Agents Act 2008*”. However, he is alleged to have been acting as a real estate salesperson at material times. He also puts it that “*Government Authorities and Tribunals responsible for dealing with the complaints*” have already done so and dismissed them. He appears to be referring to investigations by the NZ Police and the Serious Fraud Office, and to proceedings before a Disputes Tribunal and a Tenancy Tribunal.

[6] He seems to be submitting that his activity, which is the subject of the charges, is not that of a real estate agent. He adds that the main complainant is an unlicensed competitor and that no client of Rodney Real Estate Ltd has made any complaint about him to the Real Estate Agents Authority.

[7] The defendant also seems to be asserting that all complainants have been fully reimbursed by him.

[8] Insofar as he is charged in relation to s.85 of the Act with failing to produce documents to the Authority without reasonable excuse, the defendant seems to be or giving that, somehow, both that notice did not relate in any way to the Real Estate Agents Act 2008 and that, in any case, the information sought by the Authority has been lost on his computer.

[9] The Authority makes no further response and relies on the material it provided to us for our said notice and decision herein of 24 September 2014.

[10] We set out the following extract from our said decision of 24 September 2014:

*“[12] The grounds upon which we can consider the prosecution’s said application for interim suspension are if the licensee has been charged under s.91, and we consider it necessary or desirable to suspend his licence having regard to the interests of the public. We do consider that the evidence before us, prima facie, discloses serious wrongdoing such that there is a serious risk to the public if Mr Morton-Jones remains able to continue to practise as a real estate agent pending the outcome of the charge.*”

*[13] The licensee was slow to file a response to the charges but has sent letters to our Registrar and supplied various documents. It is put by the prosecution that the rather large number of documents so filed do not address the substance of the charges faced by the defendant; and the fact that the*

*payments (rental from property management) were eventually made to clients at later dates does not address the conduct which is the subject of the charges.*

*[14] Ms MacGibbon puts it that, in essence, the prosecution's case is that the defendant licensee was effectively using client funds as his own personal "piggy bank"; and that funds which should have been held for and paid to clients were, instead, used by the licensee.*

*[15] Ms MacGibbon also emphasises that the licensee did not review or remedy matters of his own account; and that the period of the alleged "accounting errors", as the licensee maintains they were, is over several years and those situations were only remedied when brought to the licensee's attention by the complainants.*

*[16] The prosecution seems to dispute whether there has been full repayment of the funds in relation to some of the complainants. Also, it is put that the fact there was a delay of seven months for payment to Roger Sinclair, three months to Anton Poynter, and that payment to Karen Graham was made from a different account, highlight that this is not simply a situation of accounting error.*

*[17] Ms MacGibbon submits that there are no documents or submissions from the licensee to date to give us any confidence that there is no risk to the public and that, in fact, the licensee is failing to acknowledge any issue with his conduct. She submits that, in the circumstances, there is a clear public risk associated with conduct of the licensee/defendant involving the misuse of funds; so that the defendant's licence should be suspended on an interim basis.*

*[18] The defendant seems to maintain that accounting errors have occurred on his part but only affected 2% of rental payments he collected, and he did not know of such errors until Mr Sinclair told him in May 2012. He puts it that the errors have been "fully corrected" and the clients affected "fully reimbursed". He also puts it that it is not disgraceful to experience and fully rectify such "accounting errors"; nor "to freely help people who have drug/alcohol difficulties or criminal pasts". Perhaps, the latter point relates to some of the tenants he dealt with. We note that the defendant seemed to operate through Rodney Real Estate Ltd under "Rodney Rentals".*

### **Further Recent Submissions**

*[11] As we were about to issue this decision, we received further typewritten submissions from the prosecution. In particular, Ms MacGibbon set out a chronological table for the period 17 March 2014 to date and submitted that it shows we have "bent over backwards to indulge Mr Morton-Jones as a matter of fairness, even in circumstances where it has been shown that Mr Morton-Jones provided inaccurate information to the Tribunal when he claimed he had not been served" with the charge on 24 March 2014.*

*[12] Ms MacGibbon then submitted that the defendant continues to show no real insight into his offending behaviour, and that this presents a real risk to consumers. She emphasised that his repeated assertions that he has repaid the funds to the complainants misses the essential point that he should not have used funds belonging to others, and he should have been able to account for them immediately.*

[13] In response, the defendant seemed to be asserting that no money is owed by him to any complainant and that his submissions, as summarised by us above, have not been refuted in any way. He also refers to some relevant proceedings in a Disputes Tribunal having led to the following comment by a Referee of that Tribunal:

*“Further on the evidence available, the breach arose from an inadvertent or negligent failure, rather than a deliberate or dishonest failing amounting to a breach of fiduciary duties. It was caused by errors in the processing of payments and the use of incorrect accounting codes, rather than a lack of fidelity or good faith”.*

[14] The defendant also maintains that any tardiness on his part in responding to the charges was because he had not been properly served on 24 March 2014.

[15] We record that we have carefully taken into account these further submissions but they do not alter our conclusions.

### **Our Decision**

[16] Pending the outcome of the substantive prosecution 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 charges against the defendant based on various alleged frauds set out in the first three charges involving alleged short payment of property management rental money to clients of his. We detail the charges in our said decision [2014] NZREADT 74.
- [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.

[17] We also refer to and incorporate herein the content of our said decision of 24 September 2014 referred to above as [2014] NZREADT 74 which, inter alia, sets out the detail of the charges against the defendant.

[18] Accordingly, as from and including 19 December 2014, the said licence of the defendant is suspended for a period of nine months or until the hearing of the said charges under s.91, whichever date is the earlier.

[19] 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.

[20] We are endeavouring to arrange for an urgent hearing of the charges against the defendant in order to ameliorate the effect of the interim suspension of licence should the defendant succeed in the prosecution.

[21] 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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Mr J Gaukrodger  
Member