

Decision No: [2014] NZREADT 23

Reference No: READT 024/13

IN THE MATTER OF

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

BETWEEN

**COMPLAINTS ASSESSMENT
COMMITTEE (CAC 20005)**

AND

GLENN AUSTIN

Defendant

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

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

APPEARANCES

Mr N Copeland for the Complaints Assessment Committee
Mr S Waalkens for the defendant

HELD on the papers

PENALTY DECISION

[1] The Tribunal found Mr Austin guilty of unsatisfactory conduct in a decision dated 6 December 2013.

[2] The case concerned Mr Austin's failure to draw to the purchasers' attention the fact that the property might have the potential to leak and that a previous sale had collapsed.

[3] The Tribunal must now consider the appropriate penalty for Mr Austin. The Tribunal's powers to impose a penalty reside in s 93 Real Estate Agents Act.

Principles of Sentencing

[4] There are four matters to consider when considering imposition of a penalty as set out in Real Estate Agents Authority v Lum-on [2012] NZREADT 47.

[5] 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*¹ and *Dentice v The Valuers Registration Board*².

[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*³ and Lang J in *Patel v Complaints Assessment Committee*⁴.

[d] *Rehabilitation of the Agent*

Where appropriate, rehabilitation of the agent must be considered – see *B v B*⁵.

Discussion

[6] The Real Estate Agents Authority submit that the appropriate penalty is that the Tribunal agree to implement a settlement reached by the parties (s 93(1)(b)). This settlement is that:

[a] Mr Austin will pay up to \$11,339.00 towards repairs to the property upon receipt of a builders' invoice on completion of the work.

[b] That he (and Best Realty 2010 Limited) will sell the complainant's rental property at 5 Kirk Lane, Owhata, Rotorua without commission. The White's agree to pay advertising fees.

They also seek:

[c] An order censuring Mr Austin.

¹ [1990] 2 All ER 263

² [1992] 1 NZLR 720

³ (1960) 104 CLR 186 at 201-202

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

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

[d] No further penalty.

[7] Counsel for Mr Austin submits that these orders are appropriate and recognise Mr Austin's sense of responsibility for, and acknowledgement of, the harm suffered by the Whites.

[8] The Tribunal has considered these submissions and the proposed settlement. It considers that this pragmatic settlement does meet the requirements of penalty set out above as it recognises the consequences of the agent's actions for Mr and Mrs White. Accordingly, it orders as follows:

[a] Mr Austin is censured.

[b] That he (and Best Realty 2010 Limited) will sell the complainant's rental property at 5 Kirk Lane, Owhata, Rotorua without commission. The Whites' agree to pay advertising fees.

[c] Mr Austin will pay up to \$11,339.00 towards repairs to the property upon receipt of a builders' invoice on completion of the work.

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

DATED at AUCKLAND this 25th day of March 2014

Ms K Davenport QC
Chairperson

Ms N Dangen
Member

Mr G Denley
Member