

**BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

[2014] NZREADT 71

READT 018/14

**IN THE MATTER OF** a charge laid under s.91 of the  
Real Estate Agents Act 2008

**BETWEEN** **COMPLAINTS ASSESSMENT  
COMMITTEE 20003**

Prosecutor

**AND** **MARK STEPHEN FOURIE  
(LICENSEE)**

Defendant

**MEMBERS OF TRIBUNAL**

Judge P F Barber - Chairperson  
Mr J Gaukrodger - Member  
Ms C Sandelin - Member

**HEARD** at PUKEKOHE on 13 August 2014

**DATE OF THIS DECISION** 18 September 2014

**COUNSEL**

Ms S M Earl for the prosecution (i.e. the Real Estate Agents Authority)  
Mr J Waymouth for defendant licensee

**DECISION OF THE TRIBUNAL**

***Introduction***

[1] Mark Stephen Fourie ("the licensee") faces a charge of misconduct laid by Complaints Assessment Committee 20003 ("the prosecutor") pursuant to s.73(d) of the Real Estate Agents Act 2008 ("the Act"). The prosecution originally laid two charges in the alternative, but has confirmed by 25 July 2014 memorandum that it relies only on charge 2 as set out below.

[2] On 21 January 2013, the licensee was convicted of an offence of wilful damage, namely, that on 28 May 2012 he intentionally, and without claim of right, damaged 2478 Kopu Hikuai Road, intending to cause loss to Arlene and Samuel Marshall (who had purchased that property and were to take possession of it that day). Wilful damage is an offence under s.11 of the Summary of Offences Act 1981. The licensee pleaded guilty in a District Court and was sentenced by his Honour Judge E Paul to a fine of \$500 and reparation of \$1,000.

[3] The prosecution submits that the offence reflects adversely on the licensee's fitness to be a licensee. This is the essential issue.

### **The Full Charge**

[4] The charging document reads:

#### **"Charge 1**

*Complaints Assessment Committee 2003 charges Mark Stephen Fourie with misconduct under s.73(a) of the Real Estate Agents Act 2008, in that his conduct would reasonably be regarded by agents of good standing, or reasonable members of the public, as disgraceful.*

*Particulars: The conduct contained in the Police summary of facts for the offence of wilful damage committed by the licensee on 28 May 2012, in respect of which he was convicted on 21 January 2013.*

#### **Or in the alternative**

#### **Charge 2**

*Complaints Assessment Committee 2003 charges Mark Stephen Fourie with misconduct under s.73(d) of the Real Estate Agents Act 2008, in that his conduct constitutes an offence for which the licensee has been convicted, being an offence that reflects adversely on the licensee's fitness to be a licensee.*

*Particulars: The conduct contained in the Police summary of facts for the offence of wilful damage committed by the licensee on 28 May 2012, in respect of which he was convicted on 21 January 2013."*

### **Factual Background**

[5] The factual background is accepted as, broadly, that set out in the Summary of Facts presented by the Police to the District Court before Judge E Paul at Auckland on 21 January 2013. That covered that the property damaged was the subject of a mortgagee sale when the mortgagor of it was a Ms Philippa Ross (aka Barriball) who is now the defendant licensee's wife. The purchasers at auction were a Mr and Mrs S Marshall who are regarded as the victims and they took over the property at 3.55 pm on 28 May 2012. Their purchase included the land, a dwelling house, and a converted woolshed. The latter had been converted into a fully-contained living area (legally certified by the local Council) with gibbed walls, kitchen, bathroom and bedrooms.

[6] Between 3.30 pm and 5.20 pm that day (presumably, Mr and Mrs Marshall had settled the purchase but not taken physical possession), the defendant licensee was at the property with Ms Ross who was still in possession of the keys as vendor. The defendant entered the property using such a key and had tools with him. Once inside, he damaged a large number of the walls by smashing a tool through the gib board which had been finished and painted. He used a tool to damage all the kitchen cupboards and drawers. Using a claw hammer he damaged the shower cubicle and attempted to rip off the shower wall. He then left the address with a ladder and his tools. Reparation was sought at \$19,217.95.

[7] The facts are not in dispute except that, in the course of his evidence to us, the defendant appeared to be suggesting that the property had been left unlocked for some time before 28 May 2012 so that, perhaps, other persons unknown did some of the damage.

### ***Evidence of the Defendant***

[8] In typed evidence-in-chief, the defendant covered his extensive business background and qualifications. However, the Christchurch earthquakes brought to an end his real estate career at a Harcourts agency there. He is currently engaged by Bayleys Real Estate at its Pukekohe office and has been there for about 12 months.

[9] The defendant's theme was that the above offending occurred during an extremely difficult time in his life. He accepts, of course, that his conduct was "wrong" but explained that he had been substantially traumatised by the Christchurch earthquakes and put in a very weak financial position. All this led to him being under severe stress at material times and, he puts it gave him in effect Post Traumatic Stress Disorder.

[10] Fairly recently to material times, the defendant had met the vendor (referred to above) who is now his wife. Prior to the offence referred to above, he had been living in the said converted woolshed with the vendor and her 14 year old daughter since about December 2011.

[11] It seems that, at material times, his wife was also suffering severe stress for various reasons. Indeed, the licensee now puts it that one of the reasons he pleaded guilty before the District Court, as referred to above, was to minimise the impact upon his wife (then his partner) and save her the stress of being a witness at a defended hearing of the charge against him. Accordingly he asserts that he cooperated with the Police, pleaded guilty, and has paid the fine and the contribution to reparation.

[12] The licensee emphasises that he is aged 54, has tertiary qualifications of a specialist nature, has been successful as a real estate agent, and asserts that in business he has always applied good ethics, diligence, integrity, and been methodical and honest. He also asserts that he has always had the utmost respect for other people and their property and that the offending referred to above was caused by the extreme stress to which he and his wife had been subject. He then states:

*"26. It was a stupid action that I undertook and one that is entirely out of context with my past life and one that I say with some considerable confidence that I will never repeat.*

*27. This was an isolated incident to which I pleaded guilty to and for which I'm deeply remorseful. I have always been and maintain that I am upright in my attitudes and responses to the laws of New Zealand.*

*28. This was simply at a time of extreme personal stress which circumstances I am confident will never be replicated ever again".*

[13] Mr Waymouth had the licensee give some additional oral evidence, to some extent repetitious, but adding and emphasising that he (the licensee) did not know the purchasers and was not endeavouring to offend them. He seemed to be maintaining that he really entered the property to remove certain chattels, in particular, the oven and the dishwasher. It is arguable whether they are chattels or fixtures. In any case he could not physically remove them.

[14] Before us he became very emotional.

[15] He also emphasised that he had been satisfactorily and successfully with a real estate agency in Papakura at the time of the offending but, soon after, was head-hunted (as he put it) by Bayleys at Pukekohe; so that he left the previous agency of his own free will. He tendered a testimonial from the current Regional Manager of Bayleys which is very supportive of the defendant licensee and confirms that the licensee disclosed the details of his said offending to Bayleys from the outset.

[16] The defendant was thoroughly cross-examined by Ms Earl which provided quite some more detail to the above facts. The defendant seemed to be saying that the converted woolshed, which he had damaged, was a home but was cold and rat-infested. He explained that there was another house on the farmlet property and that his wife had let that because it was quite superior in comfort to the converted woolshed. He expected that the purchasers would let the converted woolshed and live in the house.

[17] In the course of his cross-examination, the defendant seemed to admit that although the woolshed accommodation was "*rough*", it had been undamaged prior to his "*efforts*"; although then he seemed to be suggesting (as covered above) that the property was open to entry by others and that he felt some of the damage had been done before he inflicted his damage.

[18] In any case, we note from the photographs adduced that the property must have been relatively comfortable to live in prior to the damage inflicted on it by the defendant. Before us, he seemed to be saying that the property had holes in its walls which he did not make, but he did not want to defend the charge laid against him by the Police because that would be too stressful for his new wife.

[19] Ms Earl put it to him, inter alia, that the \$1,000 reparation, which he had paid as ordered by the Court, was rather modest for damage of \$19,217.95. The defendant seemed to accept that. He emphasised that he "*was not in a rational environment*" at the time of his offending which was "*a threatened and stressful time for us*". He agreed that the effect of his actions against the property were "*awful for the purchasers*". He admitted that not only was he endeavouring to remove what he regarded as chattels, but also he had vented some "*severe frustration*" on the converted woolshed property. He asserts that he did not intend to cause the purchasers harm or distress because he did not then know who they were; but he accepted that the damage he caused affected the purchasers. He added "*Yes, it was bad judgement on my part*".

## **The Stance of the Prosecution**

### **Misconduct**

[20] Section 73 provides:

#### **“73 Misconduct**

*For the purposes of this Act, a licensee is guilty of misconduct if the licensee's conduct—*

- (a) would reasonably be regarded by agents of good standing, or reasonable members of the public, as disgraceful; or*
- (b) constitutes seriously incompetent or seriously negligent real estate agency work; or*
- (c) consists of a wilful or reckless contravention of—*
  - (i) this Act; or*
  - (ii) other Acts that apply to the conduct of licensees; or*
  - (iii) regulations or rules made under this Act; or*
- (d) constitutes an offence for which the licensee has been convicted, being an offence that reflects adversely on the licensee's fitness to be a licensee.”*

[21] The conviction is not disputed. Rather, the licensee submits that the offence does not reflect adversely on his fitness to be a licensee, because the incident was an isolated event which occurred at a time of significant personal stress and was out of character with his life prior to and subsequent to that time.

[22] Ms Earl submits that actions taken by licensees in their personal life, that is, outside the sphere of real estate agency work, are capable of forming the basis of misconduct charges under s.73(a) and, where that action results in a conviction, under s.73(d). That is correct. Where non-real estate agency work is involved in a charge under s.73(a), the key enquiry is whether there is a *"sufficient nexus"* between the conduct and fitness or propriety of the licensee to carry out real estate work. It is submitted for the prosecution that similar considerations apply to charges laid under s.73(d) in determining whether the offence, and the circumstances of the offence, reflect adversely on the licensee's fitness to be a licensee. We agree.

[23] Ms Earl referred to a number of our decisions decided under s.73(a) involving non-real estate work to assist in determining whether the conduct in this case reflects adversely on the licensee's fitness to be a licensee. We have held that where conduct falls so markedly below expected standards of agents of good standing and/or reasonable members of the public, misconduct findings are warranted to uphold public confidence in the real estate industry.

[24] However, we accept that not every conviction will reflect adversely on a licensee's fitness to be a licensee. Some convictions, and the circumstances of those convictions, will be so plainly serious that they will meet that test, given the

reflection on the licensee's character. Other convictions would not be referred to us because of the lack of connection between the conduct and the licensee's fitness and propriety to carry out real estate agency work. The prosecution submits that the offence committed by the licensee, and outlined above, falls into a class of offences between those categories in that the offending is moderately serious and the circumstances are such that they call into question the licensee's fitness to be a licensee.

[25] The prosecution submits that the offence for which the licensee was convicted reflects adversely on his fitness to be a licensee, because of the circumstances of the offending.

[26] As appears to be acknowledged by the licensee, it is relevant that real estate agents are trusted with other people's property and are expected to act with utmost integrity in dealing with it.

[27] In this case a significant connection to the licensee's fitness to practice is the fact that the licensee knew that the property was the subject of a mortgagee's sale and that the offending took place around the time the new owners were to take possession. Ms Earl submits that these facts largely speak for themselves. She puts it that the licensee must have known that his actions would cause significant distress to Mr and Mrs Marshall and appear to have been so designed. It is submitted that a real estate agent would (or should) have particular appreciation for the stress that can occur around the time of sale and purchase of property, and the licensee's actions almost certainly heightened that stress for the purchasers. Again, we agree with Ms Earl.

[28] The licensee has explained that he was himself under severe personal stress at the time that he committed the offence. However, licensees must be able to be trusted to conduct themselves in a calm and professional manner at all times, if consumer interests are to be promoted and protected. They are expected to conduct themselves professionally in the course of business, both while performing real estate agency work and otherwise. The fact that the property was the subject of the said transaction, and that the offending occurred in that context, is highly relevant to the question of whether the offence reflects adversely on the licensee's fitness to be a licensee.

[29] Ms Earl noted that counsel for the licensee referred to the licensing provisions of the Act and to *Revill v Registrar of REAA* [2011] NZREADT 41 where we stated that the "*fit and proper person*" criterion applies in addition to the prohibitions contained in s.37. The licensee submits that none of the statutory prohibitions apply in Mr Fourie's case and, accordingly, that it is necessary to satisfy the test under s.36(1)(c) that the licensee is a fit and proper person to hold a licence, notwithstanding the fact of the conviction. We do not think there is any useful point in addressing s.36 of the Act in this case which involves a simple consideration of s.73, which the prosecution have confined to s.73(d).

[30] The prosecution submits that Mr Waymouth's reference to s.36 confuses two different statutory tests as the test under s.73(d) is that the offence reflects adversely on the licensee's fitness to be a licensee. It does not require that we be satisfied that the licensee is not a fit and proper person to be a licensee. It is also submitted by Ms Earl that the fact that, upon the charge being proved, we may make orders short of suspending or cancelling the defendant's licence supports this.

[31] For a time, Mr Waymouth submitted that the defendant is facing a situation of double jeopardy, but he withdrew that in his final oral submissions to us. The prosecution also disputes the submission that the defendant is being punished twice for the same offending. Ms Earl puts it that the statute expressly provides for charges to be laid where the licensee has been convicted of an offence. Furthermore, disciplinary proceedings serve a different purpose to criminal proceedings.

[32] It is settled law that the purpose of disciplinary proceedings is not to punish the individual, but to ascertain whether the individual has met appropriate standards of conduct in the occupation concerned, and what may be required to ensure that, in the public interest, such standards are met in the future. The protection of the public and the maintenance of proper professional standards (specific and general deterrence) are the key considerations. In the context of real estate agency work specifically, we agree that the purpose of the proceedings is to protect consumers and promote public confidence in the performance of real estate agency work, as stated in s.3 of the Act.

[33] The prosecution submits that the licensee's decision to act in the way in which he did, even if in difficult personal circumstances, reflects adversely on his fitness to be a licensee because it is inherent in the offence that his actions were intended to cause loss, in this case, to the new purchasers of a home. It is submitted that real estate agents can be expected to act with better judgement than demonstrated by the licensee on this occasion, particularly, in light of the awareness that a licensee would or should have of the impact of such action on the purchasers of the property. We agree.

#### ***Further (Oral) Submissions for the Prosecution***

[34] Ms Earl stressed that the issue is not whether the defendant is a fit and proper person to hold a real estate agent's licence but whether he has transgressed against s.73(d) of the Act.

[35] Ms Earl notes that the defence put it that the offending was a one-off incident and out of character and will not recur. However, she emphasises that the issue is whether the defendant has met the appropriate standards of conduct in terms of the real estate agency profession; and she again referred to the Act as having the purpose of protecting consumers and creating public confidence in the real estate agency industry.

[36] In terms of sentencing factors (should we find Charge 2 proven), Ms Earl noted that we must take into account general deterrence and specific deterrence against the defendant and decide whether professional consequences should flow. She submitted that an agent's personal life can be relevant to professional standards and that is a factor in terms of s.73(d). She accepts that not every conviction will lead to there being misconduct in terms of s.73(d). She submits that the issue is whether its circumstances reflect on the defendant's fitness to be a licensee and whether there is a sufficient nexus between the nature of the offending and the defendant's real estate agency work. She emphasised that it is fundamental that a real estate agent be trustworthy in respect of a person's property. She put it to be concerning that, as a real estate agent, the defendant so interfered with a real estate transaction and so interfered with property which is the subject of real estate agency work.

[37] Ms Earl accepted that, perhaps, the prospect of the defendant reoffending is low, but that we must consider the factor of general deterrence and proper professional consequences from such offending. She again emphasised that we are not faced with the licensing issue of whether the defendant is a fit and proper person to hold a licence. She put it as concerning that the defendant must have had the intention to cause the said loss to the purchasers and the said damage to real estate property. She put it that he seemed to be trying to minimise his offending before us.

### ***A Summary of the Stance for the Defendant***

[38] Mr Waymouth referred to a number of our cases dealing with a licensee's fitness to be a licensee in various circumstances. He submits that the defendant has accepted his conviction and his wrongdoing is not a risk to the general public or to any property of members of the public; has accepted his wrongdoing; has explained to us the circumstances leading up to the offending; and has put all these matters behind him.

[39] Mr Waymouth referred to the defendant as having had a successful career as a real estate agent over the past nine years and having adduced to us a good testimonial from his current employer.

[40] Mr Waymouth submits that the conviction and the offence do not reflect adversely on the defendant's fitness to be a licensee and emphasised his submission that the offending was a one off isolated incident; that it took place at a time of extreme personal stress for the defendant and for his then partner (now his wife); and was totally out of character with the defendant's life prior to then and subsequently.

[41] In his final submissions to us, Mr Waymouth submitted that the defendant was leniently treated by Judge Paul in terms of the Police prosecution referred to above. Mr Waymouth noted that he was unable to obtain His Honour's sentencing notes which, inter alia, might have explained why the defendant was only ordered to pay \$1,000 towards reparation. That could have been related to insurance issues, although we would have thought that the insurer is just as entitled to reparation as is the property-owning victim.

[42] Inter alia, Mr Waymouth put it to us that the defendant has been honest with us, is no risk to the public, and that such offending will never recur. In particular, Mr Waymouth sought "*compassion*" from us in terms of the personal and financial circumstances of the defendant which he outlined to us. Indeed, because we indicated at the end of the hearing that we found Charge 2 proven and preferred to deal with sentence immediately after the hearing, we refer further below to the financial position of the defendant.

[43] Mr Waymouth accepted the statement of relevant legal principles as set out by Ms Earl for the prosecution.

### ***Outcome***

[44] In summary of the relevant facts, the licensee's partner, Philippa Ross, owned the property at 2478 Kopu-Hikuai Road. She defaulted in her mortgage obligations and the property was sold by way of mortgagee sale. The purchasers of the property were Samuel and Arlene Marshall who settled that purchase on 28 May 2012.



[45] However, on that day the licensee entered the property using a key. He used a tool to damage a large number of the walls, kitchen cupboards and drawers. He also used a claw hammer to damage the shower cubical and attempted to rip the shower wall off. The summary of facts indicates that the reparation sought was in the sum of \$19,217.95. The Police photographs adduced to us provide an indication of the damage caused.

[46] Was the licensee's conduct, leading to his conviction, an offence which reflects adversely on his fitness to be a licensee?

[47] We are in broad agreement with the case for, and the submissions of, the prosecution so that we find Charge 2 proven. The defendant's conduct outlined above constituted an offence for which the defendant has been convicted and we find that offence to reflect adversely on his fitness to be a licensee because licensees must respect the property and feelings of other people, especially, the integrity of real estate. They are expected to be balanced and fair and conduct themselves professionally in the course of life and business, while performing real estate agency work and otherwise. It is fundamental that a real estate agent be trustworthy in respect of another person's property and respect real estate transactions. In those respects the defendant failed.

### **Penalty**

[48] At the end of the evidence and relevant submissions, we made it clear that misconduct had been proven. There then seemed to be no issue about that; but a desire by the defence, understandably, to make submissions on penalty.

[49] Ms Earl had suggested that in terms of sentencing factors including, in particular, deterrence, there would need to be a suspension of the defendant's licence or, at least, a high level of fine. An obvious realistic difficulty is the precarious financial position of the defendant so that Mr Waymouth recalled the defendant to explain his financial position to us.

[50] Essentially, it seems that the defendant's wife is bankrupt and, therefore, cannot contribute to the defendant's financial position for at least two years. However, only a few weeks before the hearing before us, the defendant has purchased a farmlet near Pokeno with a substantial bank mortgage. His equity in the property is only \$60,000 towards a price of \$590,000. The defendant's gross income to 31 March 2014 was \$80,000 as a real estate agent, and for some years prior to that seems to have been very low.

[51] Mr Waymouth accepts our attitude that a just penalty would include a suspension of the defendant's licence is warranted and would not be unreasonable, but he submits that the gravity of that for the defendant, namely, the loss of income during a period of suspension, is out of all proportion to the defendant's offending and that a principle in fixing penalty for professional offending is to focus on the maintenance of the standards of the relevant industry rather than punishment. We agree with that approach in principle.

[52] Mr Waymouth emphasised that the defendant has no savings but accepts that in the ordinary course, we would probably be making a suspension order. He stressed that would be economically devastating to the defendant and his current family through loss of income while suspended, and that he is "*mortgaged to the*

*maximum*”, as Mr Waymouth put it. Mr Waymouth also emphasised that the defendant is due to settle the purchase of the said farmlet on 28 August 2014 and wondered how he would be able to meet monthly mortgage payments from then if he is suspended as a licensee.

[53] Mr Waymouth asked that we impose simply a strong censure order against the defendant and a fine of about \$5,000 together with an order that the defendant provide a written apology to Mr and Mrs Marshall as purchasers of the said property. Indeed Mr Waymouth points out that the defendant is currently facing a civil action from them, presumably, for at least \$18,000 in terms of the actual cost of remedying the damage he caused at the property. Mr Waymouth again submitted that this was a case requiring us to take a compassionate approach.

[54] We are conscious of the explanatory factors for the appalling conduct of the defendant as we have covered them above. We accept that we need to take into account some compassion as well as fixing a penalty which is just and takes into account such factors as deterrence as emphasised to us. However, we need to also take into account such factors, as denunciation and accountability, but we give credit to the defendant for his remorse. We think it likely that the offending of the defendant i.e. his conduct at material times as explained above, was out of character and one-off and brought about to quite some extent by intense general stress. Nevertheless for a person to be a real estate agent, and in terms of the defendant who has much experience in life and as a real estate agent and is well educated, there must be trust, honesty, respect for other people and their property and mental balance, commonsense, and good judgement. Those and other aspects were lacking on the occasion of the offending in question on the part of the defendant.

[55] It would not be unreasonable to simply revoke the defendant's licence on the basis that people who so offend should not be in the real estate industry. However, in terms of the situation as we have outlined it above, we feel able to deal with this matter by way of suspension of licence rather than revocation. Frankly, the licence should be suspended for quite some time but we are conscious of the massive financial and human impact of a suspension on the defendant licensee. It could be said that he has shown some gall in purchasing a farmlet at this stage and thereby tying-up \$60,000 of financial capital which, apparently, is all he possesses.

[56] However, having stood back and absorbed the above, we order that the defendant's licence be suspended for a period of two months from 13 August 2014; and that he be fined \$2,500 to be paid to the Registrar of the Authority at Wellington within three calendar months; and that he be censured; and that he forthwith apologise in writing to Mr and Mrs Marshall.

[57] We observe that we consider the above sentencing package to be rather kind to the defendant.

### ***Name Suppression***

[58] We are conscious that Mr Waymouth has made extensive and pressing submissions for name suppression of the defendant for various reasons, including the health and mental stability, seemingly, of both the defendant and his wife; but no medical evidence has been adduced to us. Counsel are well aware that, over the past year or so, we have dealt with many such applications and set out therein (and have published) our views on relevant principles in some detail. We have made it

clear to Mr Waymouth that we have no hesitation in dismissing that application in this case and we simply set out below basic principles upon which we rely in such a situation.

[59] Proceedings before us are generally open to the public and may be reported on. Under s.108 of the Act we may, however, make orders restricting publication of, among other things, the names of persons involved in proceedings.

[60] We considered the principles relevant to applications under s.108 in *An Agent v Complaints Assessment Committee (CAC 10028)* [2012] NZREADT 02. There we held that we had the power to make non-publication orders on appeals from decisions of Complaints Assessment Committees and we set out the principles to consider when determining when to make such orders. Relevantly, we relied on *Lewis v Wilson & Horton Ltd* where Her Honour Elias CJ said at paragraph [41]:

*"In R v Liddell ... the Court of Appeal declined to lay down any code to govern the exercise of a discretion conferred by Parliament in terms which are unfettered by legislative prescription. But it recognised that the starting point must always be the importance of freedom of speech recognised by s.14 of the New Zealand Bill of Rights Act 1990, the importance of open judicial proceedings, and the right of the media to report Court proceedings: What has to be stressed is that the prima facie presumption as to reporting is always in favour of openness."*

[citations omitted]

[61] We went on to consider whether those principles were applicable to disciplinary proceedings. In doing so, we referred to the purposes of the Act, which focus on consumer protection, as well as other decisions referring to principles applicable to disciplinary tribunals and non-publication orders *Director of Proceedings v I* [2004] NZAR 635 (HC); *F v Medical Practitioner's Disciplinary Tribunal* HC Auckland, AP 21-SW01, 5 December 2001; and *S v Wellington District Law Society* [2001] NZAR 564 (HC). In those decisions, the courts accepted that the principles referred to in *Lewis* were applicable to disciplinary tribunals.

[62] More recently, in *W v The Real Estate Agents Authority (CAC 20004)* [2014] NZREADT 9 at [17] we accepted that the starting point must always be publication because this reflects Parliament's intention in passing the Act.

[63] As regards the nature of any potential media reporting of proceedings, in *Ryan v REAA and Skinner* [2013] NZREADT 51, we confirmed that at paragraph [10]:

*"... we are not in a position to make non-publication orders based on concerns about how matters "might" be reported in the media, or understood by "impressionistic" readers. Any concerns about unfair or unbalanced reporting must be dealt with by the regulatory authorities which govern the media."*

[64] There is a public interest in openness in judicial proceedings, whatever the facts of the particular case, and that interest is not outweighed by any agreement between the parties as to restricting publication. Where parties bring disputes before Complaints Assessment Committees and/or us, that must be on the basis that they are engaging in a public and open process and their names may be reported subject to good reasons for an order restricting that.

[65] It cannot be that a mere fear that publication might impact a licensee's business is enough to rebut the presumption in favour of openness. If that was the case, virtually all licensees appearing before us would be granted an order prohibiting publication of their name.

[66] There are no sufficient grounds in this case for abrogating from the principle of open justice. The appellant's application for name suppression is dismissed.

[67] 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 J Gaukrodger  
Member

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Ms C Sandelin  
Member