

**BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

[2014] NZREADT 79

READT 050/14

**IN THE MATTER OF**

an appeal under s.111 of the Real Estate Agents Act 2008

**BETWEEN**

**SANDRA BALDWIN**

Appellant

**AND**

**REAL ESTATE AGENTS  
AUTHORITY (CAC 20004)**

First respondent

**AND**

**STUART MILLINGTON**

Second respondent

**MEMBERS OF TRIBUNAL**

Ms K Davenport QC – Chairperson  
Mr J Gaukrodger – Member  
Ms N Dangen – Member

**HEARD** at AUCKLAND on 19 September 2014

**DATE OF DECISION** 6 October 2014

**APPEARANCES**

Ms S Baldwin, appellant  
Mr R Hull, support person for appellant  
Ms N Copeland for first respondent

**ORAL DECISION OF THE TRIBUNAL**

[1] Mrs Baldwin appeals the penalty decision of the Complaints Assessment Committee. She was found guilty of unsatisfactory conduct for her failure to comply with Rule 9.5 in that she had failed to provide an updated appraisal for a property in Bunnythorpe Road. Mrs Baldwin submits that the fine imposed upon her of \$1,000 was excessive. She does not appeal the finding of unsatisfactory conduct.

[2] Mrs Baldwin had provided an appraisal for the property at Bunnythorpe Road when it was previously listed with her two years prior. When the property was relisted with her prior to the sale she provided an e-mail to the vendor which addressed the question of value by saying that she felt that the market had not changed and she could not find any sales data to compare with the subject property. No formal appraisal was done.

[3] There is nothing in the rules which specifies when an appraisal must be done, however there must be an implied obligation to do it within a period which is reasonably proximate to the listing. Mrs Baldwin may have been able to argue that her e-mail was an appraisal, however she does not appeal this point and we must conclude that the rule was breached.

[4] We have considered carefully our role as an appellate body. Generally we treat appeals as a rehearing on the basis of the Supreme Court decision in Austin v Nicholls. However we consider that even the more restricted grounds of appeal set out in May v May and reiterated in Kay v B [2010] NZSC 112 means that the appeal should be allowed. We consider that on the facts Mrs Baldwin's fine was excessive and should be more modest, whilst still recognising the need to ensure that standards are maintained.

[5] Therefore the appeal is allowed and we substitute a fine of \$500 for the penalty imposed by the Complaints Assessment Committee.

[6] The Tribunal draws to the parties' attention the provisions of s 116 of the Real Estate Agents Act 2008.

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Ms K Davenport  
Chairperson

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Mr J Gaukrodger  
Member

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Ms N Dangen  
Member