

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2015] NZREADT 72

READT 060/14

IN THE MATTER OF

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

BETWEEN

**COMPLAINTS ASSESSMENT
COMMITTEE (per CAC 303)**

Prosecutor

AND

PATRICIA KERR

Defendant

MEMBERS OF TRIBUNAL

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

SUBSTANTIVE DECISION ISSUED – 7 May 2015 [2015] NZREADT 33

HEARD ON THE PAPERS

DATE OF THIS DECISION ON PENALTY 28 October 2015

REPRESENTATION

Mr R M A McCoubrey for the prosecuting Authority
No participation by or for the defendant

PENALTY DECISION OF THE TRIBUNAL

Background

[1] In our decision herein of 7 May 2015 [2015] NZREADT 33 we found the following charge to be proved:

“Charge 1

Complaints Assessment Committee 303 charges Patricia Kerr (former licensee) with misconduct, in that her conduct would reasonably be regarded by agents of good standing, or reasonable members of the public, as disgraceful.

Particulars

Between April 2012 and June 2013, the former licensee failed to account to Gordon and Ruth Christopher for at least \$10,703.70 rental money paid in respect of 9

Adams Road and 207A Hill Street, Thames, when acting as property manager.”

[2] In terms of the lack of participation of the defendant in this prosecution we noted in our said substantive decision as follows:

“[3] Ms Kerr’s licence was cancelled in January 2014, apparently, for failing to comply with annual educational requirements. She did not appear at the fixture, nor did she participate in preliminary procedures. She was not represented before us. Accordingly, this prosecution proceeded by way of formal proof. On 30 March 2015 we received a letter from the defendant advising that she would not attend any hearing and understood it would proceed “without my attendance”.

[3] We also noted as follows in paragraphs [9] and [10] of that decision:

“[9] Mr Gallacher also outlined the efforts he has made to contact Ms Kerr. It seems clear that she does not wish to take any steps in the proceeding.

[10] Ms Kerr is currently unlicensed after having her licence cancelled due to non-compliance with her continuing education requirements.”

[4] Since our said decision of 7 May 2015 our Registry has received no contact from the defendant nor any response to the Registry’s attempts to communicate with her.

[5] Presumably that stance of non involvement or interest in this case of the defendant is because she has been unlicensed since January 2014.

Discussion

[6] The charge set out above related to the former licensee’s actions as a property manager. In short, we found it proven that she failed to account for at least \$10,703.62 rental money to Gordon and Ruth Christopher the owners for two rental properties in Thames.

[7] We have been unable to obtain submissions from the defendant on penalty because she will not communicate with our Registry. The substantive hearing of this prosecution took place on 25 March 2015 before us at Thames (with subsequent affidavit evidence). The defendant sent a letter to us, which we received on 30 March 2015, stating she would not be attending the hearing.

[8] The reason the defendant’s licence was cancelled in January 2014 was her failure to carry out the required continuing education.

[9] It is submitted for the prosecuting Authority that, in any event, cancellation of the defendant’s licence would have been and is the appropriate penalty for this offence which involved failing to account for a significant sum of client’s funds. Although, as covered in our substantive decision, it is clear law that property management is not *“real estate agency work”* as defined in s 4 of the Real Estate Agents Act 2008, we found in terms of s 73 of the Act (which defines *“misconduct”*) that the conduct we covered in our decision and covered by the charge would be regarded by agents of good standing, or reasonable members of the public, as disgraceful so as to be misconduct under s 73 of the Act.

[10] We accept, of course, that the principal purpose of the Act is to promote and protect the interests of consumers in respect of real estate transactions and promote public confidence in the performance of real estate agency work. One of the ways in which the

Act achieves its purpose is by providing accountability through an independent transparency, and effective disciplinary process.

[11] Professional standards must be maintained. The aspects of deterrence and denunciation must be taken into account. It is settled law that a penalty in a professional disciplinary case is primarily about the maintenance of standards and the protection of the public, but there can be an element of punishment. Disciplinary proceedings inevitably involve issues of deterrence, and penalties are designed in part to deter both the offender and others in the profession from offending in a like manner in the future.

[12] Due to non-communication with our Registry by the defendant, we cannot assess such standard principles of sentencing as aggravating and mitigating features and remorse, except for aggravating features emphasised by the prosecution. Nor can we consider rehabilitation of the defendant which might have involved requiring her to undergo training or education.

Outcome

[13] We order as follows:

- [a] The defendant's licence is cancelled in terms of our power to do so under s 110(2)(b) of the Act.
- [b] In terms of our powers to award compensation under s 110(2)(g) of the Act, the licensee must forthwith pay \$10,703.62 to the complainants Gordon and Ruth Christopher.

[14] 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