

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2015] NZREADT 84

READT 003/15

IN THE MATTER OF an appeal under s 111 of the Real Estate Agents Act 2008

BETWEEN **BRANKA PAVIC**

Appellant

AND **REAL ESTATE AGENTS
AUTHORITY (CAC 306)**

First respondent

AND **HUI (JAMES) JU**

Second respondent

BEFORE:

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

HEARD ON THE PAPERS

DATE OF THIS DECISION 1 December 2015

REPRESENTATION

The appellant on her own behalf
Mr M J Hodge, counsel for the Authority
Mr T D Rea, counsel for the licensee second respondent

DECISION OF THE CHAIRPERSON

Basic History of Procedural Steps

[1] This appeal was filed on 27 January 2015. There was a directions hearing by telephone on 12 May 2015 leading to a timetable to a fixture for 2 September 2015.

[2] Due to non-compliance with the timetable by the appellant, there was a further directions hearing by telephone on 10 July 2015 setting a new timetable to that fixture for 2 September 2015.

[3] By memorandum of 3 July 2015 counsel for the licensee expressed concern, inter alia, that the appellant felt that she had provided sufficient material to the Complaints Assessment Committee and did not need to file proper briefs of evidence to this Tribunal. Mr Rea put it that the information previously supplied by the

appellant had been by way of “*voluminous, unstructured, frequently inflammatory and irrelevant email messages*” which did not provide a satisfactory basis for a hearing.

[4] This led to a further email from Ms Pavic dated 12 July 2015 stating, inter alia, that she could not afford a lawyer and was seeking legal aid and needed that and an extension of time to prepare herself. It is noted that Mr Rea has given Ms Pavic advice to assist her progress her case. On 14 July Ms Pavic applied for adjournment of the hearing, then scheduled for 2 September 2015, to allow her time to seek legal aid. An adjournment was granted by consent on that basis.

[5] Again due to Ms Pavic’s non-compliance with the timetable, there was a further directions conference by telephone on 24 August 2015 leading to a new timetable and fixture for 9 December 2015. At that point Ms Pavic was given one more chance to comply with the timetable on the basis that, otherwise, her appeal would be struck out for non-prosecution.

[6] The second respondent filed witness statements on 24 September 2015 and opening submissions on 22 October 2015, but Ms Pavic has not complied with any timetable.

[7] By email of 20 November 2015 Ms Pavic advised that she was not available on 9 December 2015. By response email of 20 November 2015, this Registry advised Ms Pavic that, if she wished to seek an adjournment of the hearing on 9 December 2015, she needed to set out the full position in an email to all parties by 5.00 pm Tuesday, 24 November 2015 and we did not require that she do that by way of an affidavit.

[8] Then Ms Pavic filed an email dated 25 November 2015 reading as follows:

“Morning everyone

Firstly I would like to apologise for the inconvenience caused due to my compassionate circumstances and grieving process caused by my dad’s illness.

To proceed with the current date 09.12.2015 of hearing – I would need to know if the surveillance camera footage had been obtained for the Court Hearing and by agents who reported the contract has been signed there.

I’m sure that highly respected Judge Barber who I have a huge respect for and his services / very kind personality ... will find my request fair, logical and reasonable as this is how it has been reported by Barfoot not by me

They just need to prove this that’s all.”

[9] That same day Mr Rea filed a memorandum and a portion of that reads as follows:

“2 Given the prior conduct of this proceeding, and particularly the repeated lack of regard shown for timetable directions made by the Tribunal, counsel has serious concerns that there is a likelihood that Ms Pavic may simply fail to appear at the scheduled hearing of her appeal on 9 December 2015, which will result in further inconvenience and wasted costs.

- 3 *The concern is heightened by the absence of jurisdiction of the Tribunal to order costs against complainants / appellants, so that merely striking the appeal out for non-appearance on the schedule date will not be satisfactory from the perspective of the second respondent.”*

[10] On 26 November 2015 Ms Eric, on behalf of Mr Rea, advised Ms Pavic that “as previously advised it is stated in the evidence of Jean Smith, there is no surveillance camera footage for that date as the cameras had not yet been installed”.

[11] At that point (10.38 am on 26 November 2015) I directed the Registry to send the following email to Ms Pavic namely:

“Dear Ms Pavic,

You have not established any convincing reason to adjourn the fixture referred to below. You must, by 12 noon on Friday 27 November 2015, confirm in writing, to this Tribunal and parties that you will attend the hearing of your appeal scheduled to take place, in Auckland, on Wednesday 9 December 2015 at 10.30 am. If you do not supply such confirmation in accordance with this direction, the appeal will be struck out forthwith.”

Outcome

[12] There has been no response from Ms Pavic. Accordingly, this appeal is struck out for non-prosecution by the appellant.

[13] 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 G Denley
Member

Mr J Gaukrodger
Member