

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2016] NZREADT 21

READT 075/15

IN THE MATTER OF an application under ss 92 and 115
of the Real Estate Agents Act 2008

BETWEEN **REAL ESTATE AGENTS**
AUTHORITY (CAC 404)

Applicant

AND **DELAWER HOOSAIN KUMANDAN**

Defendant

MEMBERS OF TRIBUNAL

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

HEARD ON THE PAPERS

APPEARANCES

Mr J Simpson, counsel for the Authority
The defendant on his own behalf

DECISION NO. 2 - AS TO INTERIM SUSPENSION
DATED 26 FEBRUARY 2016

[1] Mr Kumandan faces a charge of misconduct under s 73 of the Real Estate Agents Act 2008. Mr Kumandan is a licensed salesperson employed by Sega Realty Limited in Manukau. The Complaints Assessment Committee allege that between 16 June 2014 and 20 November 2014 Mr Kumandan forged the signature of Eric Robin Lloyd on nine documents. Five of these relate to the sale and purchase of properties in Tokorua, and other documents alleged to have had forged signatures include a client consent for licensee to acquire a property and tenancy agreement dated 16 June 2014.

[2] The Tribunal have yet to hear the charges but in the interim the Complaints Assessment Committee have made an application for interim suspension of Mr Kumandan's licence. This application is dated 27 January 2016 and is made pursuant to s 115 of the Real Estate Agents Act 2008. The Complaints Assessment Committee submit that it is in the public interest for Mr Kumandan's licence to be suspended pending the determination of the charge. They rely on the affidavit of Charlotte Gerrard, a licensed private investigator contracted by the Real Estate Agents Authority, and the evidence of Linda Morrell, a forensic document examiner and handwriting expert.

[3] The Complaints Assessment Committee allege that Ms Morrell's affidavit shows that there are a number of significant differences between the signature of Eric Robin

Lloyd on the relevant documents and the specimen of Mr Lloyd's handwriting. Ms Morrell's opinion is that there is evidence to suggest that the signatures were not completed by Eric Robin Lloyd. Ms Morrell's conclusion is that it is possible that the licensee has completed Eric Robin Lloyd's signature on the documents and that the licensee completed the word "*Director*" on other documents. The Complaints Assessment Committee submit that the Tribunal should also take into account the fact that Mr Kumandan responded to the investigator in an unprofessional and threatening way during the course of the investigation. The Complaints Assessment Committee also submitted that Mr Kumandan has a previous finding of disciplinary misconduct in which he was found to have forged a signature on a settlement notice on a single occasion. This, they submit shows a similar pattern of behaviour and thus that there is a significant risk to the public. The Complaints Assessment Committee submit finally that the details of the charge show that Mr Kumandan "*displays a patent disregard for his professional obligations which is inconsistent with the standards of honesty and integrity required of licensees*".

[4] Section 115 requires a Tribunal to give a licensee written notice of its intention to suspend the licence. Once this notice is issued a licensee has 10 working days to make written representations in response to the notice. In order for the Tribunal to give such written notice it must be satisfied that it is proper in the public interest to give the notice of the intention to suspend to Mr Kumandan.

[5] Mr Kumandan provided the Tribunal with a copy of a statement from Mr Lloyd. Mr Lloyd (the man whose signature Mr Kumandan is charged with forging) says that he has entrusted Del (Mr Kumandan) to attend to all his business details and he has given him permission to sign any documents on his behalf at his (Del's) sole discretion. The statement says that Mr Kumandan has his general power of attorney. He said he is in the "*process of adopting Del and his family under the Te Ture Whenua Maori Act 1993*" and he has "*already whanaued Del and his family under the provisions of Te Kanga Maori under the Maori Land Act of 1993*". Finally he said that the charge sheet is without substance and merit. There is a letter of support from Inia Segal (who is the owner or branch manager of Segal Realty, Mr Kumandan's employer) which says that "having responded to the alleged charges of forgery it is abundantly clear that the investigations are entirely misguided".

Discussion

[6] It is a serious matter to suspend a licensee or a salesperson from practice without the charge against them having been established. The test for the Tribunal is whether it is necessary or desirable in the public interest to suspend the licence of the licensee.

[7] The Tribunal must therefore balance what it perceives to be the risk to the public of allowing the licensee to carry on practicing as a real estate agent against the interests of the agent in not having their livelihood unduly restricted pending the determination of the charge.

[8] The evidence of the document examiner does establish that it is possible that the signatures of Mr Lloyd are not his actual signatures. Against this the Tribunal must balance the fact that Mr Lloyd himself has made no accusations against Mr Kumandan, claims (admittedly in an unsworn document) that the signatures are his own and/or that he has empowered Mr Kumandan to sign his signature. Further in his interview with the investigator he was somewhat vague about the nature of the transactions concerned but was adamant in his defence of Mr Kumandan.

[9] In order for the Tribunal to make an order under s 115 the evidence of the Complaints Assessment Committee would need to have included an assertion or claim from Mr Lloyd that the signatures were not his. Ms Morrell's statement is not completely unequivocal given that she was only able to examine photocopies of the documents in question and not the originals. We therefore do not consider that there is sufficient evidence for the Tribunal to determine that it is necessary or desirable for Mr Kumandan's licence to be suspended at this time. Should the situation change between now and the hearing when there is new, different or amplified evidence the Tribunal will of course be prepared to revisit its decision. Accordingly the Tribunal dismisses the application under s 115.

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

Ms K Davenport QC
Chairperson

Mr G Denley
Member

Ms N Dangen
Member