

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2016] NZREADT 37

**READT 081/14; READT 019/16;
READT 024/16**

IN THE MATTER OF charges laid under s 91 of the Real Estate Agents Act 2008

BY REAL ESTATE AGENTS AUTHORITY (CAC 301), AND REAL ESTATE AGENTS AUTHORITY (CAC 403)

AGAINST GRANT TUCKER
Defendant

AND

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

BETWEEN GRANT TUCKER
Appellant

AND THE REAL ESTATE AGENTS AUTHORITY (CAC 403)
Respondent

Hearing: 3 June 2016 (by teleconference)

Tribunal: Hon P J Andrews, Chairperson
Garry Denley, Member
Catherine Sandelin, Member

Appearances: Mr Tucker, in person
M J Hodge, on behalf of CAC 301 and CAC 403

Date of Decision: 9 June 2016

**DECISION OF THE TRIBUNAL AS TO JOINDER OF CHARGES AND
APPEAL FOR HEARING**

Procedural Background

[1] On 16 September 2014 Complaints Assessment Committee 301 (CAC 301) laid a charge of misconduct against Mr Tucker, under S 73(a) (disgraceful conduct) of the Real Estate Agents Act 2008 (the Act) (the first charge). In his response to the Charge dated 9 October 2014, Mr Tucker denied the charge. The first charge has been set down for hearing on 11 and 12 July 2016.

[2] On 11 May 2016 Complaints Assessment Committee 403 laid a further charge of misconduct against Mr Tucker, under s 73(a) (disgraceful conduct) of the Act (the second charge). The second charge has not as yet been set down for hearing.

[3] On 23 May 2016 Mr Tucker filed an appeal against CAC 403's decision to lay the second charge (the appeal). The appeal has not as yet been set down for hearing.

[4] By way of a Memorandum dated 25 May 2016, counsel for CAC 301 and CAC 403, Mr Hodge, sought the Tribunal's leave for the first and second charges to be joined and heard together, and for the charges and the appeal to be heard at the same hearing.

[5] Mr Tucker opposes leave being given.

The charges and the appeal

[6] Mr Tucker is a licensed real estate agent, carrying on business as Netrealty Ltd.

[7] The allegations in the first charge may be summarised as being that Mr Tucker pursued a dispute with another licensee (Custom Residential Ltd) (CRL) by sending offensive and/or derogatory letters and emails to a principal and employees of CRL and its solicitor, by sending packages containing offensive material to CRL and its solicitors, by verbal abuse, and by vandalising various items. The conduct is alleged to have occurred between February and May 2014.

[8] The allegations in the second charge may be summarised as being that Mr Tucker pursued CRL and its solicitor by verbally abusing the principal, by sending unsigned letters to clients of CRL, by sending packages containing offensive material

to the principal and CRL's solicitor, and by posting a derogatory statement on CRL's Facebook page. The conduct is alleged to have occurred on 13 March 2105, and between June and October 2015.

[9] The grounds of Mr Tucker's appeal against CAC 403's decision to lay the second charge are that the notice of CAC's determination to lay a charge did not give reasons, no evidence had been supplied to support the determination; the complainants were serial complainants and there was a significant amount of information in the possession of CAC 403 and its investigator to confirm that the complainants had made false and misleading accusations and were unreliable; the complainants were using the REAA to pursue a vendetta against him; neither he nor any company of which he has been a director has had a complaint made against him in over 20 years of real estate agency work; and that it is extraordinary that when complainants are caught out deceiving the public, the REAA, and other legal entities, they are not themselves held accountable for misleading the REAA.

The application for joinder

[10] The grounds on which Mr Hodge sought leave for joinder and the hearing of the first and second charges and the appeal together are that there will be a significant overlap in the evidence for the two charges; the conduct of which Mr Tucker is charged is alleged to have occurred over a period of some 18 months, namely February 2014 and October 2015; that the main witnesses for both charges will be the same; their evidence will be significantly similar for both charges; and Mr Tucker will not be prejudiced.

[11] With regard to the appeal, Mr Hodge submitted that the Tribunal has previously dealt with appeals against decisions to lay charges at the same time as the substantive charges are heard. He further noted that no appeal had been laid against CAC 301's decision to lay the first charge, where similar conduct is alleged. He submitted that in the circumstances it is appropriate for all matters to be progressed to a single substantive hearing, and that Mr Tucker be given the opportunity at the hearing to make a submission that the second charge should not have been laid.

Discussion

[12] Pursuant to s 105 of the Act the Tribunal may regulate its own procedures as it thinks fit, subject to the rules of natural justice. The Tribunal considers that it is appropriate to allow charges to be joined for hearing where the parties are the same, and there is a significant similarity between the alleged conduct between the charges. Both of those factors are present in this case. Further, in this case, the main witnesses in both charges are the same. All of these factors point to leave being given.

[13] Further, having the two charges heard together will avoid what would, in the circumstances, be a duplication of hearings before the Tribunal, possibly before different panels. Joinder would save hearing time for the Tribunal, and would thus be a more efficient use of the Tribunal's resources. The charges will be heard by a panel of the Tribunal, which will be well able to consider the charges, and the evidence relating to each charge, separately.

[14] The same factors apply to the appeal. It follows from the fact that the second charge alleges similar conduct to that alleged in the first charge (albeit over a different period of time) that the appeal will cover issues that would reflect on both charges. The Tribunal does not consider that there is any reason to depart from previous practice of hearing appeals such as this one at the same time as the substantive charge.

[15] The Tribunal was concerned that the hearing of the two charges and the appeal could not be completed within the scheduled hearing on 11 and 12 July, and that the short period until that date would not allow Mr Tucker adequate time to prepare for the hearing of the second charge and the appeal. Mr Tucker advised that he is prepared for the first charge, but could not prepare for the hearing of the second charge and the appeal by that time.

[16] A three-day hearing can be allocated for 22-24 August 2016. We record Mr Tucker's objection that that will be insufficient time for preparation. However, the Tribunal considers that the extended period will allow Mr Tucker an adequate opportunity for preparation, and is in accordance with the principles of natural justice.

Orders

[17] The scheduled hearing for the first charge (11-12 July 2016) is vacated. A hearing is allocated to hear the first and second charges, and the appeal, for 22-24 August 2016.

[18] The following time table directions are made:

- [a] CAC 301 and CAC 403 are to file and serve any additional and amended briefs of evidence relating to the first and second charges by 20 June 2016;
- [b] Mr Tucker is to file any evidence in relation to the first and second charges by 29 July 2016;
- [c] CAC 301 and CAC 403 are to file and serve opening submissions in relation to the first and second charges by 8 August 2016;
- [d] Mr Tucker is to file his opening submissions in relation to the first and second charges, and the appeal, by 15 August 2016.

Hon P J Andrews
Chairperson

Garry Denley
Member

Catherine Sandelin
Member