

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2016] NZREADT 43

READT 082/15

UNDER THE REAL ESTATE AGENTS ACT 2008
IN THE MATTER OF AN APPEAL UNDER SECTION 111 OF
THE ACT
BETWEEN PARSOA (SHAUN) BAHRAMITASH
Appellant
AND THE REAL ESTATE AGENTS
AUTHORITY (CAC 404)
First respondent
AND SATYA NAIDU
Second respondent

Hearing: On the papers by consent

Tribunal: Ms K Davenport QC – Chairperson
Mr J Gaukrodger – Member
Ms C Sandelin – Member

Appearances: Mr S Sharma – Counsel for the appellant
Ms R Savage and Mr J Simpson – Counsel for the first respondent
No appearance by or on behalf of the second respondent

Decision: 27 June 2016

DECISION OF THE TRIBUNAL

[1] Mr Bahramitash is a real estate agent practising in Auckland. The complainant Mr Naidu purchased a property at 37 Birdwood Ave, Papatoetoe in 2011. Mr Bahramitash was the agent who dealt with Mr Naidu on the sale. Mr Naidu complained that when he inspected the property he was given particulars of a sleep-out. He said that he was not told that the sleep-out was an illegal structure. Mr Naidu said that after purchase he commenced work on the sleep-out/garage/carport, and the Council required him to stop the work as the building works were said to be unconsented. He was issued a Notice to Fix.

[2] The Complaints Assessment Committee (CAC) found that when the property was listed for sale in 2011 the description on the flyer handed to Mr Naidu referred to a sleep-out. The CAC found that the sleep-out was non-compliant and that Mr Bahramitash had failed to inform Mr Naidu of this. The CAC found that Mr Bahramitash had engaged in unsatisfactory conduct because he misrepresented the property as having a sleep-out and failed to adequately disclose to the complainant that the area described as capable of being a sleep-out was non-compliant. This was said to be in breach of Rule 5.1, 6.4 and 6.5 of the Real Estate Agents Act (Complaints and Discipline) Regulations 2009.

[3] The agent appealed. He has adduced additional evidence from the Council and an affidavit from Mr Naidu's neighbours to show that the sleep-out referred to in the 2011 flyer was in fact a tool shed/sleep-out and did not need any Council consent for construction because it was less than 10 metres in size. The work done on the garage and sleep-out by the complainant was work that led to the Notice to Fix under the Building Act 2004. The work done by the previous vendor/owner and referred to in the 2011 documentation had nothing to do with the subsequent Council actions. The Notice to Fix was all caused by work undertaken by Mr Naidu. Accordingly there has been no breach of any of Mr Bahramitash's obligations. Accordingly the Tribunal sets aside the decision of the Complaints Assessment Committee and quashes all its orders, including penalty orders, against Mr Bahramitash.

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

Ms K Davenport QC
Chairperson

Mr J Gaukrodger
Member

Ms C Sandelin
Member