

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2016] NZREADT 58

**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: 22-24 August 2016

Tribunal: Hon P J Andrews, Chairperson
Mr G Denley, Member
Ms C Sandelin, Member

Appearances: Mr Tucker, on his own behalf
Mr M Hodge and Ms K Lawson-Bradshaw for the respondent

Ruling: 23 August 2016

**Oral Ruing of the Tribunal
(Application for issue of a witness summons)**

[1] Mr Tucker has sought leave to issue a summons to Mr John Stempa to attend and give evidence at this hearing. The Tribunal notes that on 29 July 2016 the Chairperson issued a Minute in respect of Mr Tucker's earlier request to issue summonses for two witnesses he intended to call, one of which is Mr Stempa.

[2] The Minute noted that the "will say" statement provided by Mr Tucker (which incorporated evidence expected to be given by both witnesses, in one statement) did not appear to be relevant to the charges against him.

[3] The Minute went on to say:

In the circumstances, the summons will not be issued at this stage. If, during the hearing, it becomes apparent that the evidence of the two requested witnesses is relevant to the proceedings, the Tribunal may adjourn the hearing to a later date in order for those witnesses to attend.

[4] At the end of yesterday's hearing the Tribunal raised with Mr Tucker whether he wished to revisit the issue of the summonses. Mr Tucker has sought leave this morning to issue a summons to Mr Stempa to attend and give evidence. He has provided a "will say" statement.

[5] In support of the application Mr Tucker has submitted that Mr Stempa's evidence would be primarily relevant to issues of credibility. He also submitted that Mr Stempa's evidence would show a "tone" within the company (Custom Real Estate Ltd;) in that it includes people who are not ideal to work in the industry.

[6] Mr Hodge has submitted there is little if any relevance in any of the matters Mr Stempa may refer to in his evidence.

[7] The evidence that it is expected Mr Stempa would give by reference to the "will say" statement is as follows:

[a] The first refers to an email to Mason Lockhart, solicitor: Mr Stempa is expected to say that the contents of the email are correct and therefore not defamatory. We do not consider this to be relevant to particular (e) of charge 1, which is where that email is referred to. The charge does not include any allegation that the statement is defamatory. Rather it alleges

that the statement is derogatory and/or offensive. It is for the Tribunal to decide whether the email is derogatory and/or offensive. In determining this the Tribunal will look at the statement objectively. This is, if anything, a matter for submission.

[b] The next statement relates to recovering commission. We do not find this to be relevant to any particular in either charge 1 or charge 2. In any event, the Tribunal has heard evidence on the point and that evidence was not challenged by the Authority. Further Mr Stempa's evidence would be hearsay and would not assist us in the determination.

[c] The next matter relates to a payment to Ms Mirkin. Any evidence Mr Stempa could give would clearly be hearsay. Mr Tucker can himself give evidence relating to the matter. Further we do not find this to be relevant to any particular in either charge. To the extent it might be relevant to credibility, that again is a matter on which Mr Tucker can give evidence.

[d] There are then a number of matters referred to in Mr Stempa's "will say" statement which refer to licensees who have been "lost" to the company, licensees who have resigned, the company not being able to recruit licensees, and the company having shrunk in size. Mr Tucker submitted in respect of this evidence that many more people than he had been dismissed or left. He submitted that such people may have done what he is accused of having done. Various matters concerning licensees have been put to witnesses for the Committee. Their evidence has not been challenged by the Committee. To the extent that this issue is relevant to any particular in either charge, the evidence has been presented and the Tribunal can reach its determination on that evidence.

[e] In relation to "a property manager who left under a cloud" (we assume that this is a reference to the evidence of Ms Brown), Ms Brown has given evidence on the issue. Her evidence was that she did not leave on the best of terms. Her evidence was not challenged by counsel for the

Committee. Mr Stempa's evidence would be hearsay and does not assist us in determining the charges.

[f] As to evidence concerning a complaint made by Mr Beard that Mr Tucker had breached conditions of bail, we note that that was put to Mr Beard. Mr Beard was not re-examined on the issue by counsel for the Committee. Any evidence that Mr Stempa may give is not relevant to any particular in either charge. Mr Tucker can make submissions on the issue fo Mr Beard's credibility, as can counsel for the Committee. Mr Stempa's evidence would not assist us.

[g] As to Mr Stempa's potential evidence as to investigation of staff of Custom Real Estate Ltd concerning the importation and distribution of drugs, we cannot see any relevance to any particular in either charge of such evidence. The "tone" of the company, and the fitness of any other person to practice, is not relevant to a charge against Mr Tucker himself.

[8] Pursuant to s 109 of the Real Estate Agents Act 2008 the Tribunal can receive any statement that it considers will assist us in dealing effectively with the matter before us. We do not find that there is anything in Mr Stempa's proposed evidence that would assist us. Further we have concluded that receiving his evidence would unduly delay the hearing of the charges. Accordingly we will not allow a summons to be issued to Mr Stempa.

[9] 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.

Hon P J Andrews
Chairperson

Mr G Denley
Member

Ms C Sandelin
Member