

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2016] NZREADT 59

**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 Ruling (2) of the Tribunal
(Evidence of Ms K Duncan)**

[1] For the hearing of the charges against Mr Tucker, the Committee intended to adduce evidence from Ms K Duncan, formerly employed by Custom Real Estate Ltd. A signed brief of her evidence has been filed and served.

[2] Ms Duncan was to give her evidence this morning. However, Mr Hodge advised the Tribunal that owing to a serious family illness, Ms Duncan is not able to attend to give her evidence. It is not necessary to set out details of the illness.

[3] The Tribunal is satisfied that the circumstances of her evidence give “reasonable assurance that the statement is reliable” (s 18 (a) of the Evidence Act 2006,) and that there is good reason for Ms Duncan’s absence, such that she is “unavailable to give evidence” (s 18 (b) (i)).

[4] Mr Hodge sought to have Ms Duncan’s brief of evidence admitted into evidence as admissible hearsay. Mr Tucker opposed this, on the grounds that it was important for him to cross-examine her. In particular, he submitted that Ms Duncan’s evidence was “the nearest thing to unbiased evidence” in this case. He submitted that if the Tribunal were not prepared to adjourn the hearing until such time as Ms Duncan was able to attend, then her evidence should be excluded in its entirety.

[5] Ms Duncan’s evidence is in two parts. The first comprises evidence about Custom Real Estate Ltd, and is consistent with evidence given by other witnesses, and Mr Tucker has had the opportunity to cross-examine those witnesses. The second part comprises evidence concerning Mr Tucker. No other witness has given similar evidence.

[6] The Tribunal’s decision was that the first part of Ms Duncan’s evidence will be admitted. The Tribunal will bear in mind that Mr Tucker has not had the opportunity to cross-examine her. As Mr Tucker will not have the opportunity to cross-examine Ms Duncan, the second part of her evidence will be disregarded.

[7] 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