

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2016] NZREADT 75

READT 064/15

IN THE MATTER OF

an Appeal under Section 111 of the Real Estate Agents Act 2008

BETWEEN

RUSSELL MARTIN
Appellant

AND

THE REAL ESTATE AGENTS
AUTHORITY (CAC 407)
First Respondent

AND

NATHAN TAMIHANA
Second Respondent

AND

GOLD REAL ESTATE GROUP LIMITED
Third Respondent

On the papers

Appearances:

Ms M J Borcoski, on behalf of the
Appellant
Ms K Lawson-Bradshaw, on behalf of the
First Respondent
Mr P Napier, on behalf of the Second and
Third Respondents

Date of Ruling:

21 November 2016

RULING OF THE TRIBUNAL
(Request for clarification of findings)

[1] The Tribunal issued its decision on this appeal on 4 October 2016.¹ The Tribunal found that the second and third respondents had engaged in unsatisfactory conduct, and directed that a telephone conference be scheduled to set a timetable for filing submissions as to penalty.

¹ *Martin v The Real Estate Agents Authority (CAC 407)* [2016] NZREADT 67.

[2] By a memorandum dated 3 November 2016, counsel for the second and third respondents requested that the Tribunal clarify its decision by specifying which specific allegations give rise to the findings of unsatisfactory conduct, against which respondent.

[3] The Tribunal responds to that request, as follows:

[a] First issue:

[i] The second respondent was found to have engaged in unsatisfactory conduct by failing to give the appellant proper explanation of his role, and in particular, his obligations as a salesperson on behalf of the vendor: Breach of rr 6.2 and 6.4.

[ii] The third respondent was not found to have engaged in unsatisfactory conduct on this issue.

[b] Second issue:

[i] The second respondent was found to have engaged in unsatisfactory conduct by failing to give the appellant a full and fair explanation of the nature and implications of the pre-auction offer form: Breach of rr 9.7 and 9.8.

[ii] The third respondent was found to have engaged in unsatisfactory conduct by failing to give the appellant a full and fair explanation of the nature and implications of the pre-auction offer form: the listing agent (Ms Marriott) presented the appellant's signed offer to the vendor, then brought the auction forward, without ensuring that the second respondent had given the appellant a full and fair explanation of the nature and implications of the pre-auction offer form (including the Agency's position that the appellant could not withdraw the pre-auction offer once it was accepted by the vendor): Breach of rr 9.7 and 9.8. It is also a breach of rr 8.3 and 8.4.

[c] Third issue:

[i] The second respondent was not found to have engaged in unsatisfactory conduct on this issue.

[ii] The third respondent was found to have engaged in unsatisfactory conduct by misleading the second respondent as to the parameters within which an offer might be made: Breach of rr 9.4. It is also a breach of rr 8.3 and 8.4.

[d] Fourth issue:

[i] The second respondent was not found to have engaged in unsatisfactory conduct on this issue.

[ii] The third respondent was found to have engaged in unsatisfactory conduct by misleading the second respondent as to the level of interest in the property: Breach of rr 9.4. It is also a breach of rr 8.3 and 8.4.

[e] Fifth issue: Neither the second respondent nor the third respondent has been found to have engaged in unsatisfactory conduct on this issue. The matters set out at [86] of the decision are reflected in the earlier findings.

[4] The Tribunal thanks counsel for the second and third respondents for their indication that the penalty decision can be made on the papers. The timetable for submissions set out at paragraph 3(i) – (iii) of his memorandum is appropriate.

[5] The Tribunal directs that submission on penalty are to be filed and served as follows:

[a] Submissions on behalf of the Authority are to be filed and served within 14 days of the date of this Ruling;

[b] Submissions on behalf of the Appellant are to be filed and served within 14 days thereafter;

[c] Submissions on behalf of the second and third respondents are to be filed and served within a further 14 days.

Hon P J Andrews
Chairperson

Mr G Denley
Member

Ms C Sandelin
Member