

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2017] NZREADT 63

READT 025/17

IN THE MATTER OF

An application for review under s 112 of
the Real Estate Agents Act 2008

BETWEEN

DUNCAN NAPIER
Applicant

AND

THE REGISTRAR OF THE REAL
ESTATE AGENTS AUTHORITY
Respondent

Hearing:

10 October 2017, at Auckland

Tribunal:

Hon P J Andrews, Chairperson
Ms N Dangen, Member
Ms C Sandelin, Member

Appearances:

Mr S McAnally and Ms B Hojabri for the
applicant
Ms K Feltham, on behalf of the respondent

Ruling:

10 October 2017

ORAL RULING OF THE TRIBUNAL
(Application for continued suppression of name)

[1] There is presently an interim order for suppression of any report or account of this proceeding for review, and the name or any particulars of the applicant. That order was made on 31 August 2017 and has continued until today.

[2] The continuation of the interim suppression order has been raised at the end of the hearing. The Tribunal has heard submissions on behalf of the applicant and on behalf of the Registrar. The Tribunal has also heard submissions from Mr Nichols who has been present as a reporter throughout this hearing. These have all been considered by the Tribunal, having adjourned for that purpose. We have reached a decision on the matter.

[3] The Tribunal accepts the principles favouring open justice, the public interest, and the right for proceedings to be reported on. The Tribunal accepts the purposes of the Act as they are set out in s 3 of the Act, and we do not need to repeat them. The Tribunal is very aware that the purpose of the Act is to promote and protect the interests of consumers and to promote public confidence in the real estate agency industry.

[4] It is also accepted that one of the functions over the Tribunal is, to put it shortly, to hold licensees to account. It is also accepted that there is a general presumption that decisions of the Tribunal will be published unless there is some telling or persuasive argument that they should not be. We would add to that that it is indeed rare for the Tribunal to order that a decision not be reported.

[5] We understand the argument made by Mr Nichols that there is some inconsistency between the argument put forward by the applicant and the agency in which he is engaged, to the effect that the agency is prepared to support and stand by the applicant, and his submission to have both his and the agency's name suppressed at this stage.

[6] Section 107(1) of the Act provides that every hearing of the Disciplinary Tribunal must be in public. However, s 107(2) expressly provides that subsection (1) does not apply to applications to review a decision of the Registrar under s 112 of the

Act. We see this as a clear indication that applications for review are to be treated differently.

[7] Secondly it is relevant that, as has been noted earlier in this hearing, the Tribunal always gives priority to hearing applications for review of a Registrar's decision, and to issuing decisions on those applications. At least in this Chairperson's experience that has always been adhered to. The Tribunal will endeavour in this case to issue a decision shortly.

[8] We also take into account that through publication of the civil proceedings, members of the public are already aware of the findings against Mr Napier in the High Court and the Court of Appeal. There has also been publication (at the time of reporting the High Court findings) of the fact that Mr Napier was a licensee and that he was engaged at Bayleys agency. That is not in our view determinative as to whether there should be publication of the application for review.

[9] Finally, we note that there has been no evidence or submission put to the Tribunal that the public is at this particular time at risk from Mr Napier.

[10] We have concluded that the interim order should remain in place for what is expected to be a very short period pending our decision on the application but it will be revisited when the decision is to be issued.

[11] 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

Ms N Dangen
Member

Ms C Sandelin
Member