

**BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

**[2018] NZREADT 56**

**READT 032/18**

IN THE MATTER OF

An appeal under section 111 of the Real Estate Agents Act 2008

BETWEEN

SIMON MARTIN  
Appellant

AND

THE REAL ESTATE AGENTS  
AUTHORITY (CAC 416)  
Respondent

Hearing:

9 October 2018, at Auckland

Tribunal:

Hon P Andrews, Chairperson  
N Dangen, Member  
N O'Connor, Member

Appearances:

Mr C Child, on behalf of Mr Martin  
Ms E Mok, on behalf of the Authority

Date of Ruling:

15 October 2018

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**ORAL RULING OF THE TRIBUNAL AS TO EVIDENCE**

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[1] This is an oral ruling as to evidence sought to be admitted on appeal on behalf of Mr Martin. The evidence is set out in an email from Mr Martin to his counsel Mr Child, dated 5 October 2018.

[2] Our first point is to express concern that this application was not made earlier. It is evident that the parties and counsel were aware from the point of the first memorandum of counsel, prior to the first Directions Conference, as to the position regarding evidence sought to be admitted. Having said that we point out that, that in itself would not defeat an application if the application otherwise has merit.

[3] The test for the admission of evidence is that such evidence has to be fresh and therefore it has to be evidence that was not or could not reasonably have been available at the time of the Committee's consideration.

[4] Obviously, this was evidence which was without doubt available to Mr Martin. We have no hesitation in saying that it could have been provided to the Committee. So we turn then to the reason why the evidence was not provided. In summary, Mr Martin's submission is that it was not provided to the Committee because it was never considered that the Committee's concern was as to the day to day supervision of Mr Mulligan as opposed to the Agency's policies and procedures in place as to supervision of licensees. In support of the submission for Mr Martin concerning the Committee's focus we have been referred to paragraph 3.6 of the Committee's substantive decision.

[5] Ms Mok's submission, in summary, is that it is clear that the Committee was concerned with Mr Martin's actual supervision of Mr Mulligan through this transaction and not just as to the policies, systems and procedures in the Agency.

[6] The Tribunal does not accept that it was reasonable for Mr Martin to assume that the Committee was concerned only with the Agency's policies, systems and procedures. The Tribunal considers that this is clear from the questions set out by the Authority's investigator and provided to Mr Martin for his answer. We refer in

particular to question one, page 23 of the bundle. The Tribunal sees these as an invitation to Mr Martin to set out fully his actions or conduct over the period.

[7] We also refer to question two at page 24 of the bundle which focuses on Mr Martin's own knowledge of this particular transaction. We see this again as a further invitation to Mr Martin to set out the very information that he now seeks to be adduced. That question has nothing to do with systems, policies and procedures but everything to do with this particular transaction. A direct question is asked of him which he had every opportunity to answer in full.

[8] We therefore reject the submission that it was reasonable for Mr Martin to assume that he was not required to provide this information to the Committee.

[9] We add that it would have been consistent with Mr Martin's obligation as a licensee, and appropriate in the circumstances of this particular case, to provide full information as to involvement in the transaction and his supervision of Mr Mulligan.

[10] As an aside we also note that there has been guidance from both the Real Estate Institute and the Authority as to supervision around multi offer situations and complex transactions for many years and certainly well before this transaction.

[11] We turn then to the next question which is whether admitting this evidence would assist the Tribunal in reaching a decision on this appeal. We consider that Ms Mok has made a very valid point in submitting that Mr Martin's evidence of meeting with Mr Mulligan every two to three days will inevitably raise an issue as to what meaningful supervision he provided to Mr Mulligan.

[12] We consider that the evidence Mr Martin seeks to adduce only goes so far, and that is not sufficient for us to conclude that it would assist the Tribunal at this stage.

[13] Finally we address Mr Martin's submission as to his not having legal representation at the time of the Committee's investigation. It is evident from Mr Martin's email, and the address under the email, that he is a senior member of the Institute, he is qualified as an associate member of the Real Estate Institute, and he is

managing director of the Agency. We do not accept that he was not aware of his ability to instruct a solicitor. His choice was not to do so. We are of the opinion that we cannot give this factor any significant weight in our decision.

[14] The Tribunal therefore declines the application to adduce the evidence.

[15] Pursuant to s 113 of the Real Estate Agents Act 2008, the Tribunal draws the parties' attention to s 116 of the Real Estate Agents Act 2008, which sets out appeal rights. Any appeal must be filed in the High Court within 20 working days of the date on which the Tribunal's decision is served. The procedure to be followed is set out in part 20 of the High Court Rules.

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Hon P Andrews  
Chairperson

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Ms N Dangen  
Member

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Mr N O'Connor  
Member