

**PURSUANT TO S 108(1)(C) OF THE REAL ESTATE AGENTS ACT 2008,
PUBLICATION OF THE NAME OR IDENTIFYING PARTICULARS OF
THE APPELLANT AND THE SECOND RESPONDENT IS PROHIBITED**

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2019] NZREADT 10

READT 002/19

IN THE MATTER OF An appeal under section 111 of the Real
Estate Agents Act 2008

BETWEEN APPELLANT C
Appellant

AND THE REAL ESTATE AGENTS
AUTHORITY (CAC 521)
First Respondent

AND COMPLAINANT G
Second Respondent

On the papers

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

Submissions received from: Ms A-R Davies, on behalf of the Authority

Date of Decision: 29 March 2019

DECISION OF THE TRIBUNAL

Introduction

[1] The appellant has appealed against decisions of Complaints Assessment Committee 512, dated 25 October 2018 (substantive decision) and 16 January 2019 (penalty decision).

Background

[2] After the substantive decision was issued, but before the Committee considered penalty, the second respondent (the complainant) advised the Authority that he wished to withdraw his complaint against the appellant. He advised that having received further advice, he realised that as a result of having been given incorrect information, he had been mistaken in making the complaint.

[3] The second respondent was advised that the complaint could not be withdrawn after the Committee had issued the substantive decision, and that the Committee was required to finish the complaints process by issuing its decision as to penalty. The second respondent did not make any submissions as to penalty.

Submission from the Authority that the appeal should be allowed

[4] Counsel for the Authority has advised that:

The Authority accepts that, in the particular circumstances of this case, the second respondent's retraction and contradiction of his complaint means that there is no longer a proper evidential basis to support an unsatisfactory conduct finding against the appellant.

In these circumstances, the Authority consents to the appeal being allowed. ...

Discussion

[5] The Tribunal accepts that the withdrawal of a complaint, by itself, will not justify an appeal against a finding of unsatisfactory conduct being allowed. While the disciplinary process is usually initiated by a complaint, the statutory scheme does not require a complainant to pursue the complaint in order to complete the process. Further, the Committee has the power (under s 78(b) of the Real Estate Agents Act

2008) to inquire into and investigate allegations against a licensee, on its own initiative.

[6] The Tribunal also accepts that whether an appeal will be allowed on the grounds of the withdrawal and/or contradiction of a complaint by the complainant will depend on the particular circumstances of the case and an assessment of the available evidence.

[7] In the circumstances of the present case, the Tribunal is satisfied that following the complainant's withdrawal of the complaint, and his acknowledgment that he was mistaken (having received incorrect information) in making it, there was no factual basis on which the Committee could properly make a finding of unsatisfactory conduct. In these circumstances, it is appropriate for the appeal to be allowed.

Decision

[8] The appeal is allowed.

Order prohibiting publication

[9] The Tribunal notes that when making submissions on the issue of penalty, the appellant sought an order that the decisions not be published on any website, and that there be no entry of disciplinary history on the appellant's record on the Authority's public register.

[10] While that matter was not referred to in the Authority's submissions, the circumstances of this case are such that it may be appropriate that there be an order prohibiting publication of the appellant's name, or any identifying details of the appellant.

[11] The Tribunal orders that publication of the appellant's name and any particulars that may identify the appellant (including the name and details of the second respondent) order is prohibited. As submissions have not been made on the matter, the order is in the interim, pending further order of the Tribunal, if sought.

[12] Pursuant to s 113 of the Act, the Tribunal draws the parties' attention to s 116 of the Act, which sets out the right of appeal to the High Court. The procedure to be followed is set out in part 20 of the High Court Rules.

Hon P J Andrews
Chairperson

Ms N Dangen
Member

Ms C Sandelin
Member