

**BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

**[2019] NZREADT 004**

**READT 031/18**

IN THE MATTER OF a charge laid under s 91 of the Real Estate Agents Act 2008

BROUGHT BY COMPLAINTS ASSESSMENT COMMITTEE 412

AGAINST MANVINDER SINGH  
Defendant

On the papers

Tribunal: Hon P J Andrews, Chairperson  
Mr G Denley, Member  
Ms C Sandelin, Member

Submissions received from: Mr J Simpson, on behalf of the Committee  
Mr P Barrowclough, on behalf of Mr Singh

Date of Decision: 24 January 2019

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**DECISION OF THE TRIBUNAL  
(CHARGE AND PENALTY)**

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## **Introduction**

[1] Complaints Assessment Committee 412 has charged Mr Singh with misconduct under s 73(c) of the Real Estate Agents Act 2008 and in the alternative, with misconduct under s 73(b) of the Act. In the further alternative, the Committee has charged Mr Singh with unsatisfactory conduct under s 72 of the Act. Mr Singh has admitted the charge of misconduct under s 73(b) of the Act: that is, seriously negligent and/or seriously incompetent real estate agency work.

[2] The Tribunal is, therefore, required to record the finding of misconduct, and to determine the appropriate penalty.

## **Summary of agreed facts**

[3] Mr Singh is a licensed salesperson and at the relevant time was a salesperson at Noble Realty Limited, trading as Ray White Papatoetoe. The owners of a property at Mangere Bridge (“the property”) listed it for sale with Mr Singh on 26 September 2016. Mr Singh introduced a property investor, Mr Bidesi, to the property. Mr Bidesi had bought and sold properties through Mr Singh prior to the events which are the subject of this charge.

[4] On 29 September 2016, the vendors entered into an Agreement for Sale and Purchase of the property with Tavi Limited (“Tavi”), for a purchase price of \$980,000, with settlement to occur on 26 January 2017. Mr Bidesi was the sole director and shareholder of Tavi.

[5] Between 29 September 2016 and 26 January 2017 Mr Singh made loans to Mr Bidesi, for purposes unrelated to the sale of the property:

[a] \$90,000, lent on 9 November 2016 (refunded on 18 November 2016);

[b] \$60,000, lent on 23 November 2016 (also later refunded).

[6] Settlement occurred on 26 January 2017. On or before 9 February 2017, Mr Bidesi told Mr Singh that he was in financial difficulty, and asked to borrow money

for the purpose of settling Tavi's purchase. On 9 February 2017, Mr Singh and another property investor each lent Mr Bidesi \$91,571, paid into the account of Mr Bidesi's solicitor.

[7] Mr Singh did not inform the vendors that Mr Bidesi's financial difficulty was the reason for the delay in settlement, and he did not tell them he had lent Tavi money for the purpose of enabling it to settle. Settlement occurred on 10 February 2017.

[8] On or about 10 March 2017, the property was transferred from Tavi to McKenzie MTS Limited ("McKenzie MTS"). Mr Singh was a shareholder in McKenzie MTS. The transfer reflected the fact that the funds provided by Mr Singh were instrumental in enabling settlement of the purchase of the property from the vendors.

### **The charge: finding**

[9] Section 136 of the Act provides:

**136 Disclosure of other benefits that licensee stands to gain from transaction**

(1) A licensee who carries out real estate agency work in respect of a transaction must disclose in writing to every prospective party to a transaction whether or not the licensee, or any person related to the licensee, may benefit financially from a transaction.

...

(3) The licensee must make the disclosure required by subsection (1) before or at the time that the licensee provides the prospective party with any contractual documents that relate to the transaction.

[10] The purpose of s 136 is to protect vendors and prospective purchasers by providing for transparency in a real estate transaction. Parties to a transaction are entitled to be aware of the identity of those they are dealing with, so that they may be assisted to make informed decisions as to the way in which they conduct themselves in negotiations.<sup>1</sup>

[11] By accepting the charge, Mr Singh accepts that his actions occurred in the context of real estate agency work. By providing the vendors with an agreement for

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<sup>1</sup> See *Clark v Real Estate Agents Authority* [2014] NZHC 1161, at paragraph [46].

sale and purchase of the property, Mr Singh was carrying out “work ..., in trade, on behalf of another person, for the purpose of bringing about a transaction”.<sup>2</sup>

[12] Further, Mr Singh accepts that he:

[a] did not disclose to the vendors that he had a prior relationship or dealings with Mr Bidesi, and failed to obtain their informed consent to continuing to act for them in the sale of the property;

[b] did not disclose to the vendors that he had lent money to Mr Bidesi on two or more occasions (totalling \$150,000), for purposes unrelated to the purchase of the property, and failed to obtain their informed consent to his continuing to act for them; and

[c] did not disclose to the vendors that Mr Bidesi was in financial difficulty and required a loan from him to settle the purchase of the property.

[13] Mr Singh accepts that his breaches as set out above constitute seriously negligent and/or seriously incompetent real estate agency work.

[14] The Tribunal finds him guilty of misconduct under s 73(b) of the Act.

### **Penalty**

[15] The principal purpose of the Act is to “promote and protect the interests of consumers in respect of transactions that relate to real estate and to promote public confidence in the performance of real estate agency work.”<sup>3</sup> This is achieved by regulating agents, branch managers, and salespersons, raising industry standards, and providing accountability through a disciplinary process that is independent, transparent, and effective.<sup>4</sup>

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<sup>2</sup> Definition of “real estate agency work”, Real Estate Agents Act 2008, s 4.

<sup>3</sup> Section 3(1) of the Act.

<sup>4</sup> Section 3(2) of the Act.

[16] Penalties for misconduct and unsatisfactory conduct must meet the need to maintain a high standard of conduct in the industry, protect consumers, maintain confidence in the industry. Penalties also include an element of deterrence, both as regards the licensee, and the industry generally.

[17] A penalty should be appropriate for the particular nature of the misbehaviour, and the Tribunal should endeavour to maintain consistency in penalties imposed for similar conduct, in similar circumstances. The Tribunal should impose the least punitive penalty that is appropriate in the circumstances. While there is an element of punishment, rehabilitation is an important consideration.<sup>5</sup>

[18] Section 110(2) of the Act sets out the orders the Tribunal may make by way of penalty. As may be relevant to the present case the Tribunal may:

- [a] Make any of the orders that a Complaints Assessment Committee may make under s 93 of the Act (these include censuring or reprimanding the licensee, and ordering the licensee to undergo training or education);
- [b] Impose a fine of up to \$15,000;
- [c] Order cancellation or suspension of the licensee's licence.

### **Submissions**

[19] Mr Simpson submitted for the Committee that Mr Singh should have been well aware that s 136 of the Act was engaged but, regardless of any reason why he did so, made loans to Mr Bidesi without taking any steps to comply with his obligations. He submitted that it must have been obvious to Mr Singh that he had put himself into a conflict of interest, and that even the most inexperienced licensee should be expected to recognise the disclosure obligations that might arise from lending money to a purchaser.

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<sup>5</sup> See *Complaints Assessment Committee 10056 v Ferguson* [2013] NZREADT 30, *Morton-Jones v The Real Estate Agents Authority* [2016] NZHC 1804, at [128] and *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1, at [97].

[20] He submitted that Mr Singh's complete failure to even turn his mind to his disclosure obligations must be considered seriously negligent misconduct, at the middle to upper range of the range of such conduct.

[21] Mr Simpson submitted that:

- [a] Mr Singh had nine years' experience as a licensed salesperson, and could be expected to have had a good level of awareness of his obligations under the Act;
- [b] Notwithstanding his dealings with Mr Bidesi through prior sales, and the substantial loans made to enable Mr Bidesi to complete the sale, Mr Singh failed, completely contrary to his obligations, to inform his vendor clients and obtain their consent;
- [c] Mr Singh failed to disclose Mr Bidesi's financial difficulty to the vendors, depriving them of the opportunity to exercise any of the options available to them;
- [d] The fact that Mr Singh was both the listing and selling salesperson meant that the risk of harm to his vendor clients was high, as he was in an optimal position to influence the price of the property for his own benefit.

[22] Mr Simpson accepted that Mr Singh had, to some extent, co-operated with the investigative and disciplinary processes, and had accepted the charge at a relatively early stage of the proceeding. He submitted that the appropriate penalty would be an order for censure, a fine in the vicinity of \$6,000 to \$8,000, and an order that he undertake further education or training around managing conflicts of interest.

[23] Mr Barrowclough submitted that Mr Singh accepts that he had an overarching responsibility to disclose the relevant information to the vendors and to obtain their informed consent to continue to act for them, and failed to comply with this obligation.

[24] He submitted that Mr Singh had not been, as Mr Simpson submitted, a licensed salesperson for nine years. Mr Singh applied for a salesperson's license in June 2015,

so at the time of the relevant transaction he had held a licence for just over one year. While he had known Mr Bidesi for nine years, that was in an industry unrelated to real estate agency work. However, notwithstanding his inexperience, Mr Singh did not resile from his conduct. He accepts he should have sought advice from his manager on the issue.

[25] In mitigation, Mr Barrowclough submitted that:

- [a] Mr Singh's sole motivation in lending money to Mr Bidesi was to enable him to settle the purchase, and his concern for the vendors who had bought a second property and were financially distressed as a result of paying mortgages on both properties.
- [b] The vendors had expressed to the Authority's investigator their appreciation of Mr Singh's assisting them to complete the sale of the property, at a time when they were paying two mortgages.
- [c] McKenzie MTS was incorporated on Mr Bidesi's recommendation, so that Mr Singh could secure the funds lent to Mr Bidesi.
- [d] Mr Singh's share of the commission on the sale was \$16,486.00, and he lost a significant amount of the money lent to Mr Bidesi, and stood to recoup only \$17,569.53.
- [e] Mr Singh had expressed remorse (reflected in his letter of apology to the vendors);
- [f] Mr Singh's offending occurred when he had been a licensed salesperson for just over one year, he had an otherwise unblemished record, he had co-operated with the investigation and entered an early guilty plea, and he had received in-house training on disclosure requirements.

[26] Mr Barrowclough submitted that the appropriate penalty would be an order for censure, a fine of \$6,000, and an order to complete further training.

## Discussion

[27] Sections 134 and 136 of the Act set out licensees' obligations where a licensee or a person related to the licensee acquires a client's land or a business, or an interest in land or a business (s 134), or where the licensee or a person related to the licensee stands to gain a benefit from a transaction (s 136).

[28] Counsel referred the Tribunal to its penalty decisions in *Complaints Assessment Committee 408 v Reed*,<sup>6</sup> *Complaints Assessment Committee 424 v Goyal*,<sup>7</sup> and *Complaints Assessment Committee v Zhang*,<sup>8</sup> concerning penalties for licensees' breaches of their obligations of disclosure under ss 134 or 136, in circumstances which had some similar features.

[29] In each of the decisions referred to above, the Tribunal stressed that the obligation to make disclosure to the parties to a transaction when a licensee has a personal interest in that transaction is fundamental to achieving the purposes of the Act of promoting and protecting the interests of consumers, and promoting public confidence in the performance of real estate agency work.<sup>9</sup>

[30] In *Reed*, the licensee bought his vendor clients' property for himself, very shortly after the start of the marketing period, and (while the vendors were aware that he was buying their property) failed to make disclosure as required by s 134 of the Act, and failed to take the steps required by s 135. The Tribunal ordered censure and imposed a fine of \$10,000. The Tribunal took into account Mr Reed's previously unblemished record and excellent reputation in the industry, character references, and ability to pay a fine in deciding not to order that his licence be suspended.

[31] In *Goyal*, the licensee was the listing agent for two neighbouring properties. On his introduction, an associate bought both properties. Mr Goyal made loans to the

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<sup>6</sup> *Complaints Assessment Committee 408 v Reed*: substantive decision [2017] NZREADT 6; penalty decision [2017] NZREADT 34.

<sup>7</sup> *Complaints Assessment Committee 424 v Goyal*: substantive decision [2017] NZREADT [2018]; penalty decision [2018] NZREADT 3.

<sup>8</sup> *Complaints Assessment Committee v Zhang*: substantive decision [2018] NZREADT 30; penalty decision [2018] NZREADT 53.

<sup>9</sup> See *Reed* (substantive decision), at paragraph [85]; *Goyal* (substantive decision) at [57]; *Zhang* (substantive decision) at paragraphs [43]–[45].



associate at the time the deposits were paid, and subsequently. A company incorporated by Mr Goyal was nominated as purchaser prior to settlement of each transaction. Mr Goyal did not inform the vendors, and did not take any of the steps required by ss 134 and 135. The Tribunal considered Mr Goyal's misconduct to be more serious than Mr Reed's, and ordered censure, suspension of Mr Goyal's licence for six months, and imposed a fine of \$4,000.

[32] In *Zhang*, the licensee introduced an existing client to the relevant property, which was being marketed by another licensee at his agency. The client entered into an agreement for sale and purchase (through the other licensee) but later wanted to extricate himself from the contract. At that time, Mr Zhang was interested in buying a property for himself and agreed that his wife would be nominated as purchaser. Mr Zhang did not inform the vendors of the nomination. The Tribunal took into account that Mr Zhang had not submitted the sale agreement to the vendor (in contrast to Mr Reed and Mr Goyal), had immediately accepted his failure to comply with his obligation, and his willingness to make a formal apology and to refund his share of the sale commission. It ordered censure and that Mr Zhang undertake further training, and imposed a fine of \$3,000.

[33] Mr Singh's misconduct is not at the level of seriousness as that of Mr Goyal. However, as he was both listing and selling agent, lent money to the purchaser, then bought the property to protect his loans, we find that Mr Singh's misconduct is at a higher level than Mr Zhang's.

[34] While the factual circumstances in each case were different, we accept Mr Simpson's submission that Mr Singh's misconduct is in many respects comparable to that of Mr Reed. However, as Mr Barrowclough submitted, Mr Reed was also found to have breached r 9.1 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012, in relation to statements made to prospective purchasers at an open home.

[35] We have taken into account the matters raised by Mr Barrowclough in mitigation and have concluded that the appropriate penalty is an order for censure, a fine of \$6,000, and an order to complete further education.

## **Orders**

[36] Mr Singh is censured and ordered to pay a fine of \$6,000. The fine is to be paid to the Authority within 20 working days of the date of this decision.

[37] Mr Singh is ordered to undergo and complete satisfactorily further education as to managing conflicts of interest and, in particular, as to the obligations set out in ss 134 to 137 of the Act. Such training is to be completed within six months of the date of this decision.

[38] 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.

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Hon P J Andrews  
Chairperson

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Mr G Denley  
Member

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Ms C Sandelin  
Member