

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2019] NZREADT 005

READT 055/18

IN THE MATTER OF

An Application for Review of a Registrar's
decision, under Section 112 of the Real
Estate Agents Act 2008

BETWEEN

XIAO HU
Applicant

AND

THE REGISTRAR OF THE REAL
ESTATE AGENTS AUTHORITY
Respondent

On the papers

Tribunal:

Hon P J Andrews (Chairperson)
Ms N Dangen (Member)
Mr N O'Connor (Member)

Submissions received from:

Ms Cann, on behalf of the Registrar

Date of Decision:

4 February 2019

DECISION OF THE TRIBUNAL

Introduction

[1] Ms Hu has applied under s 112 of the Real Estate Agents Act 2008 for review of the Registrar's decision to decline her application for a salesperson's licence. The Registrar's decision was made under s 37(3) of the Act; that is, on the grounds that Ms Hu was convicted of a crime of dishonesty within the ten years preceding her application for a licence, and is therefore not eligible to hold a licence.

[2] Timetable directions regarding Ms Hu's application were made following a Directions Conference held on 7 December 2018. Ms Hu was directed to file submissions in support of her appeal no later than 14 January 2019.

[3] Prior to the Conference Ms Cann, on behalf of the Registrar, signalled an issue as to whether Ms Hu's application was made out of time, and should therefore be dismissed. In a memorandum dated 19 December 2018, Ms Cann submitted that Ms Hu's application was not made within the period allowed under the Act for an application for review to be filed, and should therefore be dismissed. Although Ms Cann's memorandum was copied to Ms Hu, she has not filed submissions in response. Nor has she filed any submissions in support of her application for review.

[4] Ms Hu has had adequate time to make submissions in support of her appeal, and to respond to the submissions filed on behalf of the Registrar, but has not done so. The Tribunal therefore proceeds on the basis of Ms Cann's submissions, only.

Statutory provisions

[5] If the Registrar determines that an application for a licence should be declined, she must, pursuant to s 43(3)(c) of the Act notify the applicant of her decision, and of the applicant's right of review by the Tribunal.

[6] The majority of the relevant events in relation to Ms Hu's application occurred between 4 October and 8 November 2018. At that time, s 154 of the Act provided:

154 Service of notice and documents

- (1) Any notice or other document required or authorised by this Act to be given to or served on any person, is sufficiently given or served if—

- (a) it is delivered to that person; or
- (b) it is left at that person's usual or last known place of abode or business or at an address specified for that purposes in any document received from that person; or
- (c) it is posted in a letter addressed to that person by name at that place of abode or business or address; or
- (d) it is sent in the prescribed manner (if any).

[7] Section 154(1) was amended as from 14 November 2018 to insert a new s 154(1)(ca), providing that service is sufficiently given or served if:

- (ca) it is transmitted to an electronic address or a fax number provided by the person;

[8] Section 154(4) provided that:

If any notice or other document is sent by post, it is, unless the contrary is shown, treated to have been given or served on the addressee at the time when the letter would have been delivered in the ordinary course of the post, and, in proving service of the notice, it is sufficient to prove that the letter was properly addressed and posted.

[9] Section 154(4) was amended to provide that notice sent by post is treated as having been served five working days after it was posted.

[10] Section 112 of the Act provides that an applicant for a licence may apply for review of a Registrar's determination "within 20 working days of the date the applicant is notified of the determination". There is no provision that would allow the Tribunal to grant leave for applications to be made out of time.

Relevant dates

[11] The Registrar's decision to decline Ms Hu's application for a licence was set out in a letter to Ms Hu, dated 4 October 2018.

[12] Ms Hu was advised of the Registrar's decision by email on 4 October 2018. A copy of the decision was attached to the email. The Registrar's letter was posted to her the same day.

[13] A number of telephone calls were made to the Authority following Ms Hu being notified of the Registrar's decision. An Authority employee recorded on 10 October 2018 that:

Since advising Sherona [Ms Hu] that her conviction made her ineligible to apply for a licence we have had calls from her mother, the lawyer who acted for her in court and the agent who was intending employing her, all wanting an exception to be made. I explained that under s 37 of the Act, any conviction for a crime of dishonesty automatically makes the convicted person ineligible to hold a licence for a period of 10 years from the date of conviction and that we have no discretion in this matter.

[14] Ms Hu's application for review was filed on 3 December 2018.

Discussion

[15] We are satisfied that Ms Hu was properly notified of the Registrar's decision to decline her application for a licence, both by email and by a letter posted on 4 October 2018. We are also satisfied that the email and letter were addressed to the addresses provided by Ms Hu in her application for a licence. The fact that telephone calls were made to the Authority requesting an exception for Ms Hu (recorded on 10 October 2018) confirms that she received notification of the Registrar's decision.

[16] Ms Cann submitted that the "time when the letter would have been delivered in the ordinary course of post" was three working days. Adopting the more favourable five-day period specified in the amendment to s 154(4) of the Act (and excluding the day the letter was posted), the latest date on which Ms Hu is treated as having received notice of the Registrar's decision was 11 October 2018.

[17] Pursuant to s 112 of the Act, the time within which Ms Hu could apply for review of the Registrar's decision expired on 8 November 2018.

[18] As Ms Hu's application was filed on 3 December 2018, it was four weeks out of time.

[19] The Tribunal's powers are limited to those set out in the Act. In the case of applications to review a Registrar's decision, the Tribunal has no power to give Ms Hu leave to apply for review after the time within which the Act provides that she may do

so. As her application was not made within time, the Tribunal cannot consider it, and it must be dismissed.

Result

[20] Ms Hu's application for review of the Registrar's decision to decline her application for a licence is dismissed.

[21] Pursuant to s 113 of the Act, the Tribunal draws the parties' attention to s 116 of 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

Mr N O'Connor
Member