

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2020] NZREADT 53

READT 044/19

IN THE MATTER OF

An application for review of a Registrar's
decision under section 112 of the Real
Estate Agents Act 2008

BETWEEN

LI (LILY) CHEN
Applicant

AND

THE REGISTRAR OF THE REAL
ESTATE AGENTS AUTHORITY
Respondent

Tribunal:

Mr J Doogue, Deputy Chairperson
Mr G Denley, Member
Ms C Sandelin, Member

Submissions received from:

Ms V Scott, on behalf of the Authority

Date of Decision:

30 October 2020

DECISION OF THE TRIBUNAL

[1] Li (Lily) Chen (applicant) has applied under s 112 of the Real Estate Agents Act 2008 (Act) for a review of the decision of the Registrar of the Real Estate Agents Authority (Registrar) to cancel her salesperson's licence under s 54(h) of the Act.

[2] The Registrar cancelled the applicant's licence on the grounds that she had failed to pay the prescribed annual suspension fee. Section 54(h) requires the Registrar to cancel a person's licence and remove the person's name from the register if the person has failed to pay any prescribed fees or levies.

[3] The applicant does not dispute that she did not pay the prescribed annual suspension fee.

[4] In order for the applicant to succeed on her application, she must be able to point to some error of fact or law in the decision which the Registrar made. The applicant has not filed any submissions in support of her application. The applicant has not alleged that the Registrar made any error of fact or law when deciding to cancel her licence under s 54(h) of the Act nor has she put forward any material suggesting that had occurred.

[5] On behalf of the Registrar, counsel, Ms Scott submitted that the application for review should be dismissed because:

a) the Registrar was required to cancel the licence pursuant to s 54(h) of the Act, and had no discretion to decide not to cancel the licence after determining that the applicant had failed to pay the prescribed fee; and

(b) the Registrar followed the correct process for cancellation as prescribed in s 55 of the Act.

[6] Section 102 of the Act provides that one of the functions of the Tribunal is to conduct any review of a decision of the Registrar.

[7] The section provides:

112 Application to Tribunal to review determination by Registrar:

- (a) After conducting the review, the Tribunal may confirm, reverse, or modify the decision of the Registrar,
- (b) If the Tribunal reverses or modifies a determination of the Registrar, it may exercise any of the powers that the Registrar could have exercised.

[8] Counsel submitted that the application for review should be dismissed because:

(a) the Registrar was required to cancel the licence pursuant to s 54(h) of the Act, and had no discretion to decide not to cancel the licence after determining that the applicant failed to pay the prescribed fee; and

(b) the Registrar followed the correct process for cancellation as prescribed in s 55 of the Act.

No discretion

5.2 It is not in dispute that the applicant failed to pay the prescribed annual suspension fee. In those circumstances, the Registrar was obligated to cancel the applicant's licence under s 54(h) of the Act.

[9] We accept those submissions. We are satisfied that the Registrar's decision was not affected by any error or fact or law.

[10] We therefore decline to make an order modifying the decision of the Registrar. The application for review is therefore dismissed.

Mr J Doogue
Deputy Chairperson

Mr G Denley
Member

Ms C Sandelin
Member