

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2021] NZREADT 31

READT 049/19

IN THE MATTER OF

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

BETWEEN

VISHAL and MONISHA SHARMA
Appellants

AND

THE REAL ESTATE AGENTS AUTHORITY
(CAC 1901)
First Respondent

AND

JULIE BRAKE and SUCCESS REALTY LIMITED
t/a BAYLEYS ROTORUA
Second Respondents

READT 001/20

BETWEEN

JULIE BRAKE
Appellant

AND

THE REAL ESTATE AGENTS AUTHORITY
(CAC 1901)
First Respondent

AND

VISHAL and MONISHA SHARMA
Second Respondents

On the papers:

Tribunal:

Mr J Doogue – Deputy Chairperson
Mr N O'Connor – Member
Ms F Mathieson – Member

Submissions filed by:

Ms G Coleman for the Sharmas
Ms S Earl for the first respondent
Mr J Weymouth for Ms Brake

Date of Decision:

13 July 2021

DECISION OF THE TRIBUNAL

[1] The Tribunal in its decision 12 February 2021 determined, amongst other things, that the Complaints Assessment Committee should reconsider the charges that were brought against the second respondent, Ms Brake. It was the Tribunal's determination that the Complaints Assessment Committee ought to have considered the possibility of referring the matter to the Tribunal to deal with as a complaint of misconduct instead of deciding, as it did, to deal with the matter itself as a complaint of unsatisfactory conduct,

[2] Subsequently to the issue of that decision counsel for the appellants, Ms Coleman, filed a memorandum dated 5 March 2021 in which she proposed that rather than referring back to the Committee the question of whether a misconduct charge should be brought, the Tribunal ought to have decided that question itself.

[3] Counsel for the Authority, Ms Earl, responded to that suggestion in a supplementary submission dated 11 March 2021. It was her contention that the Tribunal it made its decision on the matter and it was not now open to the appellants to invite the Tribunal to review it and to substitute a different outcome. It was the further submission of the Authority that in any case, the Tribunal decision was correct in that the proper entity to consider the form of the charges was the Complaints Assessment Committee and not the Tribunal. The Authority's counsel referred to the decision of the Court of Appeal in *Nottingham v Real Estate Agents Authority* ¹[2017] NZCA 1 at [79]. which was the authority that Ms Coleman had relied upon as follows:

In the Authority's submission, absent any particular factor that would make it appropriate for the Disciplinary Tribunal to frame a matter itself (held to be permissible in *Nottingham*), it will generally be appropriate to follow Mander J's approach² of referring matters back to Committees for reconsideration. That is entirely consistent with the Court of Appeal's decision in *Nottingham* which does not suggest that the Disciplinary Tribunal should or must refer a charge to itself, only that it has the power to do so.

¹ *Nottingham v Real Estate Agents Authority* [2017] NZCA 1 at [79]

² That approach was adopted in His Honour's judgment in *Edinburgh Realty v Scandrett* [2016] NZHC 2898 at [104]-[105].

[4] Mr. Waymouth Counsel for the second respondent agreed with the Authority's submission.

[5] We consider that there are no grounds for revisiting our original decision to refer the matter back to the Complaints Assessment Committee so that appropriate charges could be reconsidered. Our decision once made must stand-subject to any appeal decision of course. In any case, it remains our view that the original decision to refer the matter back to the Complaints Assessment Committee was the correct one. We accept that the analysis which Ms. Earl has put forward³ is correct.

[6] 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.

Mr J Doogue
Deputy Chairperson

Mr N O'Connor
Member

Ms F Mathieson
Member

³ At [3] above.