

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2022] NZREADT 13

Reference No: READT 002/2022

IN THE MATTER OF

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

BETWEEN

GAGAN SEGHAL
Applicant

AND

THE REGISTRAR OF THE REAL ESTATE AGENTS AUTHORITY
Respondent

Hearing on the papers

Tribunal:

Ms C Sandelin (Chairperson)
Mr G Denley (Member)
Mr N O'Connor (Member)

Submissions received from:

Mr T Wheeler on behalf of the Authority

DECISION
Dated 22 June 2022

INTRODUCTION

[1] Gagan Seghal (the Applicant) has filed an application for review under s 112 of the Real Estate Agents Act 2008 (the Act) against the determination of the Registrar of the Real Estate Agents Authority (the Registrar) on 11 January 2022 to cancel his licence.

[2] The Registrar cancelled the Applicant's licence on the grounds that he had failed to complete the requisite continuing education. Section 54(d) requires the Registrar to cancel a person's licence and remove the person's name from the register if the person has failed to complete any required continuing education.

[3] As set out in the minute of the Tribunal dated 1 March 2022, the Applicant was due to file submissions in support of his review application by 22 March 2022. No submissions have been filed by the Applicant.

BACKGROUND

[4] The Applicant held a salesperson licence under the Act.

[5] In order to renew their licences each year, licensees are required to complete ten hours of verifiable continuing professional development, in addition to ten hours of non-verifiable education (CPD), each calendar year in accordance with the Real Estate Agents (Continuing Professional Development Rules) Notice 2018. If a licensee suspends their licence for 12 months or more they are required to complete a ten hour refresher training course within three months of the date their licence is revived.¹

[6] The Applicant voluntarily suspended his licence on 17 September 2020, until 17 September 2021.

[7] The Authority responded to the Applicant's voluntary suspension and forwarded information concerning the CPD requirements relating to licences that have been suspended. The Applicant was advised that although CPD does not need to be completed during the period the licence is suspended, CPD in the calendar year in which the licence is revived and a verifiable refresher course within 3 months of the revival date is required.

[8] On 24 September 2021, the Applicant was again notified of the requirement to complete CPD for 2021 prior to 31 December and the verifiable refresher course prior to

¹ Real Estate Agents (Continuing Professional Development Rules) Notice 2018, cl 7(3).

18 December. On 1 November 2021, the Applicant was further reminded about the requirement to complete the refresher course and a link to providers was included.

[9] On 20 December 2021 an email was sent to the Applicant advising him of the Registrar's intention to cancel his licence due to non-compliance with CPD requirements. The Applicant was given 10 working days to respond. The email incorrectly noted a date of 3 December 2021 as the response date. No response was received from the Applicant.

[10] On 11 January 2022, the Authority advised the Applicant by email that his licence was cancelled on the basis that he had not completed the requisite continuing education, pursuant to s 54(d) of the Act. As a result, the Applicant would not be entitled to apply for a new licence for a period of five years from the date of cancellation.²

APPROACH ON REVIEW

[11] 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.

[12] Section 112 of the Act sets out the Tribunal's jurisdiction on review, which provides:

112 Application to Tribunal to review determination by Registrar

...

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

[13] The issue on review is whether the Registrar made an error of fact or law in cancelling the Applicant's licence.

SUBMISSIONS

[14] As noted above, the Applicant has not filed any submissions in support of his application.

[15] There is no dispute that the Applicant failed to complete his continuing education. He noted in his application for review that he was confused as to what the requirements

² Section 37(1)(d)(i) of the Act.

were. However, the Authority submits that this does not enable the Registrar to exercise a discretion in relation to cancelling his licence.

[16] The Authority submits that the Applicant was informed multiple times as to the Act's continuing education requirements and, as a result of his failure to comply with these, the Registrar was obligated to cancel the Applicant's licence under s 54(d) of the Act.

[17] Section 54 of the Act provides as follows:

54 Cancellation of Licence

The Registrar must cancel a person's licence and remove that person's name from the register,—

...

- (d) if the person has failed to complete any continuing education required by practice rules made by the Authority pursuant to section 15.

[18] The Authority submits that it is well established that s 54 offers the Registrar no discretion in circumstances where one of subsections (a) to (h) applies. They further submit that the Tribunal has no wider powers than those of the Registrar to determine matters arising under s 54 of the Act. Accordingly, if the Tribunal finds that the Registrar was required to cancel the Applicant's licence, it has no discretion to reach a different conclusion from the Registrar.³

[19] They refer to *Troughton v Registrar of the Real Estate Agents Authority*, where the Tribunal also considered a review of a decision of the Registrar to cancel a salespersons' licence under s 54(h) of the Act. The Tribunal held that:⁴

[23] As no written representations were received by the Registrar in response to his letter of 1 July 2019, the Registrar was required to cancel his licence. Section 54 is in the imperative: the Registrar "must" cancel a person's licence if one of subsections (a) to (h) applied. As Mr Troughton failed to pay the prescribed annual suspension fee, the Registrar was bound to cancel his licence by virtue of the mandatory provisions of s 54.

[20] The Authority submits that so long as the Tribunal is satisfied the correct process was followed by the Registrar, then the Tribunal must confirm the Registrar's decision.

[21] Section 55 of the Act provides the process the Registrar must follow when cancelling a licence:

³ *Callaghan* at [18].

⁴ *Troughton v Registrar of the Real Estate Agents Authority* [2019] NZREADT 43.

55 Process for cancellation

- (1) The process for cancellation of a licence, other than by determination of the Tribunal under section 110 or at the request of the licensee under section 54(b), is as follows:
- (a) the Registrar must give the licensee written notice of the Registrar's intention to cancel the licence; and
 - (b) the notice must—
 - (i) contain or be accompanied by a statement of the Registrar's reasons for the cancellation; and
 - (ii) state that the licensee has 10 working days within which to make written representations to the Registrar as to why the licence should not be cancelled; and
 - (c) if any written representations are made by the licensee in accordance with paragraph (b)(ii), the Registrar must take those representations into account when deciding whether to cancel the licence; and
 - (d) the Registrar must then decide whether to cancel the licence and notify the licensee of the Registrar's decision as soon as practicable.
- (2) If the Registrar decides to cancel the licence, the Registrar must—
- (a) include in the notice referred to in subsection (1)(d) the grounds for the decision and the date on which the cancellation takes effect; and
 - (b) specify in the notice that the licensee has a right of appeal to the Tribunal under section 112; and
 - (c) record the cancellation on the register as soon as practicable.

[22] The Authority submits that the Registrar followed the correct process when cancelling the Applicant's licence.

DISCUSSION

[23] We agree with the submissions of the Authority. We are satisfied that the Registrar made no error of law or fact and followed the correct process in cancelling the Applicant's licence following his failure to complete the required continuing education for 2021 and the refresher training course.

[24] The Tribunal has made it clear in a number of decisions that s 54 is in the imperative. If one of the provisions set out in subsections (a) to (h) applies, the Registrar

“must” cancel the relevant licence. The Registrar has no discretion not to cancel the licence.⁵

OUTCOME

[25] The Applicant’s application for review of the Registrar’s decision is dismissed and the Registrar’s decision is confirmed.

[26] 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 2016.

Ms C A Sandelin
Chairperson

Mr G Denley
Member

Mr N O’Connor
Member

⁵ *Wang v Registrar of the Real Estate Agents Authority* [2015] NZREADT 52 and *Reid v Registrar of the Real Estate Agents Authority* [2019] NZREADT 22 at [16]–[18].