

**BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

[2022] NZREADT 14

Reference No: READT 005/2022

**IN THE MATTER OF**

An application for review under s 112 of the  
Real Estate Agents Act 2008

**BETWEEN**

**ANDREW MARTIN SHAW**  
Applicant

**AND**

**THE REGISTRAR OF THE REAL ESTATE  
AGENTS AUTHORITY**  
Respondent

Hearing on the papers

Tribunal:

D J Plunkett (Chair)  
N O'Connor (Member)  
F Mathieson (Member)

Representation:

The applicant:

Self-represented

The respondent:

T Wheeler, counsel

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**DECISION**  
**Dated 4 July 2022**

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## **INTRODUCTION**

[1] Andrew Martin Shaw, the applicant, has filed an application under s 112 of the Real Estate Agents Act 2008 (the Act), for review of the Registrar's determination on 2 March 2022 to cancel his licence.

[2] The Registrar cancelled Mr Shaw's licence under s 54(d) of the Act, because he had not completed the mandatory continuing professional development (CPD) requirements.

## **BACKGROUND**

[3] Mr Shaw previously held a branch manager's licence under the Act.

[4] On 14 November 2020, the Real Estate Agents Authority (the Authority) sent an email to Mr Shaw confirming the voluntary suspension of his licence from that day until 14 November 2021. He was advised that he did not need to complete CPD during suspension, but he would need to complete it in the calendar year in which he revived the licence. He would also need to take a refresher course within three months of revival.

[5] On 15 November 2021, the Authority sent an email to Mr Shaw notifying him that his licence was active. It would expire on 31 March 2022.

[6] On the following day, 16 November 2021, the Authority sent a further email to Mr Shaw advising him that he needed to complete CPD requirements. The 2021 hours were due by 10 January 2022. He was also required to complete a refresher course of 10 hours by 15 February 2022.

[7] In an email sent by the Authority on 14 February 2022, Mr Shaw was reminded of the CPD requirements. The 2021 CPD was due by 31 December 2021 and the refresher course by 15 February 2022. The Authority had not received confirmation that either had been completed. If it did not receive confirmation, a notice of intention to cancel his licence would be sent.

[8] An officer of the Authority, on behalf of the Registrar, sent a letter to Mr Shaw by email on 15 February 2022 notifying him that there was no record of him completing the 2021 CPD by 10 January 2022 or the refresher course by 15 February 2022. Under s 54(d) of the Act, the Registrar "must" cancel his licence. He had 10 days (until 1 March 2022) to provide a written response as to why the licence should not be cancelled.

[9] On 23 February 2022, Mr Shaw sent an email to the Authority responding to the notice of intention to cancel his licence. He said he had put his licence on hold the previous year and had recently received notice that it was up for renewal in March, or he could put it on hold again. This is his intention. He was not therefore required to do any training.

[10] The Authority replied by email on 24 February 2022. His licence had been suspended from 14 November 2020 until 14 November 2021 and had been active since then. When a licence was active, CPD had to be completed. An email about the CPD requirements had been sent to him on 16 November 2021. If he wanted to keep his licence, he would need to suspend it by 1 March 2022 or he would be at risk of having it cancelled.

#### *Registrar cancels licence*

[11] On 2 March 2022, an officer of the Authority on behalf of the Registrar sent an email to Mr Shaw cancelling his licence under s 54(d) of the Act. He had not completed the 2021 CPD by 10 January 2022 or the refresher course by 15 February 2022. Section 54(d) stipulated that the Registrar “must” cancel a licence for the failure to complete the required CPD.

#### *Further communications from Mr Shaw*

[12] Mr Shaw sent an email to the Authority on 2 March 2022. He said he had replied stating that he had put his licence on hold the previous year and did not need to undertake CPD. The Authority had responded saying he just needed to put it on hold for a further year.

[13] An officer rang Mr Shaw on 3 March 2022. She told him the Act was prescriptive. He had to complete CPD or the Registrar would cancel his licence. He had been advised at various times he needed to do something, but he did nothing.

### **REVIEW APPLICATION**

[14] On 24 March 2022, Mr Shaw sought review by the Tribunal of the Registrar’s decision of 2 March 2022 to cancel his licence.

[15] In his application, Mr Shaw stated that his last real estate sale was in December 2019 and he effectively quit real estate in March 2020 after 27 years. He put his licence on hold at the end of 2020. He thought this was until March 2021, so did not read most of the emails from the Authority. When he was contacted, he had a week or two to renew his suspension but his new business and family got hit by COVID-19 in February and he forgot to do it on time. It is extreme that he is being penalised for a clerical error.

[16] A Minute was issued by the Tribunal on 11 April 2022 directing a hearing on the papers as requested by Mr Shaw and establishing a timetable for submissions.

[17] In an email to the Tribunal on 12 May 2022, Mr Shaw accepted that he received the emails, but says he did not open them as he was out of the industry and most were not relevant. He wrongly thought that renewal of the suspension was at the end of March and that if he did not renew, the worst that could happen would be his licence would lapse. While legally the Authority might be correct in banning him for five years, that seemed to be a massive overkill for being tardy about reading emails and not paying the fee of \$100 on time.

[18] In another email to the Tribunal on 26 May 2022, Mr Shaw said it was quite ridiculous that by not paying the fee of \$100 on time, he was deemed to be practising real estate, even though the person had to be employed to do so. Because he did not pay the fee, he was barred from practising for five years. A doctor or lawyer had to do something highly negligent or criminal to be barred.

#### *Submissions of the Registrar*

[19] Mr Wheeler, in his submissions of 25 May 2022 on behalf of the Registrar, notes that it is not in dispute that Mr Shaw failed to complete CPD. While Mr Shaw says he was mistaken as to when his suspension ended and of the ramifications of not completing CPD, this does not enable the Registrar to exercise a discretion in relation to cancelling his licence. Mr Shaw was informed of the CPD requirements in multiple emails from the Authority. In those circumstances, the Registrar was obligated to cancel under s 54(d). The Tribunal has found that the Registrar “must” cancel a licence under s 54(d).

[20] It is submitted by Mr Wheeler that the correct process, as set out in s 55, was followed here. In the absence of an error of law by the Registrar, the Tribunal does not

have wider powers than those of the Registrar. The application should accordingly be dismissed.

## JURISDICTION AND PRINCIPLES

[21] Section 54 of the Act stipulates the Registrar's power to cancel a licence in certain circumstances, including the failure to complete continuing education:

### 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; or

...

[22] The Registrar must follow the process specified in s 55.

[23] A licensee's CPD requirements are set out in the Real Estate Agents (Continuing Professional Development Rules) Notice 2018. There is an annual requirement and a requirement following suspension for 12 or more months.<sup>1</sup>

[24] The Tribunal has found that s 54 is written in the imperative and the Registrar "must" cancel a person's licence if one of the subsections (a) to (h) applies.<sup>2</sup>

[25] A licensee whose licence is cancelled has the right to review the Registrar's determination under s 112 of the Act:

### 112 Application to Tribunal to review determination by Registrar

- (1) An applicant may apply to the Tribunal against a determination of the Registrar that adversely affects the applicant within 20 working days after the date the applicant is notified of the determination.

...

- (4) After conducting the review, the Tribunal may confirm, reverse, or modify the decision of the Registrar.

<sup>1</sup> See Real Estate Agents (Continuing Professional Development Rules) Notice 2018, cl 7.

<sup>2</sup> *Troughton v Registrar of the Real Estate Agents Authority* [2019] NZREADT 43 at [23], *Callaghan v Registrar of the Real Estate Agents Authority* [2019] NZREADT 47 at [17], *Chen v Registrar of the Real Estate Agents Authority* [2020] NZREADT 53 at [8]–[9].

- (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.

[26] Such an application must be conducted on the papers, unless the applicant requests otherwise.<sup>3</sup> After conducting the review, the Tribunal may confirm, reverse, or modify the decision.<sup>4</sup>

[27] The Tribunal's powers on review are no wider than those given to the Registrar. If one of the circumstances listed in s 54 is found to exist and the Registrar has followed the correct procedure, the Tribunal cannot interfere with the Registrar's decision.<sup>5</sup>

## **DISCUSSION**

[28] It is not disputed by Mr Shaw that he was correctly required to complete the specified 2021 and refresher hours by certain dates, that he received the required communications and hence the statutorily prescribed process was followed, and that he did not complete those hours by the deadlines. That being the case, the Registrar "must" cancel his licence, as s 54(d) stipulates.

[29] It is unfortunate that Mr Shaw was confused about the expiry date of his voluntary suspension, but that does not assist him. It is noted that the date was clearly set out in the Authority's email of 14 November 2020 recording his suspension. On the day following the expiry of the period of suspension, he was informed that his licence had been activated. It would seem that he intended to renew the suspension (in which case he would not have to undertake CPD) and he could have done this by 1 March 2022 (the deadline to respond to the notice of intended cancellation), but he forgot to do so. He gives a plausible explanation for why he forgot, but the justification is not relevant.

[30] There is no error of fact or law by the Registrar, who was compelled by the statute to cancel Mr Shaw's licence. Mr Shaw describes the cancellation as extreme, given what he had done wrong. Many would agree with him, but it is what the Registrar is legally required to do in the circumstances. The prohibition of five years before he can hold a licence again is a consequence of cancellation prescribed by s 37(1)(d)(i) of the Act.

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<sup>3</sup> Real Estate Agents Act 2008, s 112(3).

<sup>4</sup> At s 112(4).

<sup>5</sup> *Troughton* at [24], *Callaghan* at [18].

**OUTCOME**

[31] The application is dismissed and the Registrar's decision is confirmed.

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D J Plunkett  
Chair

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N O'Connor  
Member

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F Mathieson  
Member