

**BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

[2022] NZREADT 17

Reference No: READT 011/2022

**IN THE MATTER OF**

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

**BETWEEN**

**ZHI ZHANG**  
Applicant

**AND**

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

Hearing on the papers

Tribunal:

D J Plunkett (Chair)  
G J Denley (Member)  
P N O'Connor (Member)

Representation:

The applicant:

Self-represented

The respondent:

T Wheeler, counsel

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**DECISION**  
**Dated 31 August 2022**

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## **INTRODUCTION**

[1] Zhi Zhang, 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 24 May 2022 to cancel her licence.

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

## **BACKGROUND**

[3] Ms Zhang previously held a salesperson's licence under the Act.

[4] On 15 October 2021, the Real Estate Agents Authority (the Authority) sent an email to Ms Zhang advising that she had not completed the required 10 hours of 2021 verifiable CPD. She had to do so by 31 December 2021. If not, she would not be able to work in real estate from January 2022 as the Authority would be required to cancel her licence. If she wanted to maintain her licence, she could suspend her licence before 31 December.

[5] On 14 January 2022, the Authority sent an email to Ms Zhang advising that it did not have a record that she had completed 10 hours of 2021 verifiable CPD. The cancellation process would be started. If she was intending to complete her 2021 CPD, she would need to do so as soon as possible. Ms Zhang was advised that the Registrar "must" cancel a person's licence for the failure to complete CPD. She was further advised that if her licence was cancelled, she would not be able to apply for another licence for five years. She could otherwise suspend her licence.

[6] On 9 May 2022, the Authority wrote a letter to Ms Zhang (sent by post and email) advising that the Registrar intended to cancel her licence as she had not completed the full 10 hours of verifiable CPD in the 2021 calendar year. She was given 10 working days to advise any reason why the licence should not be cancelled. If she did not wish her licence to be cancelled, she could complete the training within the next 10 working days, voluntarily suspend her licence or voluntarily surrender her licence.

*Licence cancelled*

[7] On 24 May 2022, the Registrar wrote to Ms Zhang (by post and email) cancelling her licence because she had not completed the 2021 verifiable and non-verifiable CPD training by 31 December 2021.

[8] Ms Zhang and an officer of the Authority spoke by telephone on 2 June 2022. Ms Zhang told the officer that all the emails had gone to “spam” so they were missed. She was told this was not an acceptable excuse.

**REVIEW APPLICATION**

[9] On about 30 May 2022, Ms Zhang sought review by the Tribunal of the Registrar’s decision of 24 May 2022 to cancel her licence.

[10] Ms Zhang said she joined an agency in March 2021 and did some training but after August 2021, there was lockdown and no training was organised. She had to stay home to look after the children and so quit her job in September 2021. She received the email from the Authority in October 2021 and paid to renew her licence, but nobody notified her how many training hours she had done and how many she still needed to do. In December 2021, she changed to another agency.

[11] There were two reasons Ms Zhang hoped the Tribunal would consider:

1. 2021 was a very tough year for her family due to the lockdown with no income.
2. She could not access the system at the former agency to see how many hours she had done.

[12] A Minute was issued by the Tribunal on 15 June 2022 as to the procedure and setting out a timetable.

[13] On 27 June 2022, Ms Zhang sent to the Tribunal some medical information. It shows that in about May 2022 or earlier, she was diagnosed with a medical condition and was subject to surgery and treatment between about 3 May and 3 June 2022. Ms Zhang says that she did not receive the mail sent to her house on 9 and 24 May 2022 until she arrived home from hospital on 26 May.

## JURISDICTION AND PRINCIPLES

[14] 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

...

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

[16] 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>

[17] 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>

[18] A licensee whose licence is cancelled has the right to seek review of 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.

- (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.

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<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].

[19] 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>

[20] 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**

[21] It is not disputed by Ms Zhang that she was correctly required to complete the specified 2021 hours by a certain date, that the required communications were sent and hence the statutorily prescribed process was followed, and that she did not complete those hours by the deadline. That being the case, the Registrar "must" cancel her license, as s 54(d) stipulates.

[22] Ms Zhang was clearly advised of the requirement to complete CPD and the consequences of not doing so. She was reminded of the requirement and given a number of opportunities, even after the deadline of 31 December 2021. It is unfortunate that the emails apparently went to "spam" and that the reminder letter posted on 9 May 2022 was not seen by her until after her licence had been cancelled as she was hospitalised then, returning home on 26 May 2022. It is Ms Zhang's responsibility to ensure she receives both email and postal correspondence. She does not dispute that the correspondence was sent to her electronic and postal addresses registered with the Authority.

[23] Unfortunately, the tough year she and her family had in 2021, her inability to find out from her former agency how many CPD hours she had already completed and her medical condition are not relevant. This is because neither the Registrar nor the Tribunal have any discretion in the matter.

[24] Ms Zhang additionally disputes receiving a call from a named person on 9 May 2022 and says if she did, she would have done the required hours. It is not apparent what this is a reference to. It is, in any event, irrelevant.

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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].

*Conclusion*

[25] There was no error of fact or law by the Registrar, who was compelled by statute to cancel Ms Zhang's licence for failing to complete the required CPD hours by the deadline.

**OUTCOME**

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

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D J Plunkett  
Chair

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G J Denley  
Member

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P N O'Connor  
Member