

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2022] NZREADT 21

Reference No: READT 010/2022

IN THE MATTER OF

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

BETWEEN

ZHUOYA (ZOYA) WEI
Applicant

AND

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

Hearing on the papers

Tribunal:

C A Sandelin (Deputy Chairperson)
P N O'Connor (Member)
F J Mathieson (Member)

Representation:

The applicant:

Self-represented

The respondent:

S Farnell

DECISION
Dated 14 October 2022

INTRODUCTION

[1] Zhuoya Wei (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 23 May 2022 to cancel her licence.

[2] The Registrar cancelled the Applicant's licence on the grounds that she had failed to complete the requisite continuing education. Section 54(d) of the Act 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 Tribunal's minute dated 28 June 2022, the Applicant was due to file submissions in support of her review application by 7 July 2022. On 28 June 2022, the Applicant sent an email to the Tribunal case manager outlining her position. The Applicant confirmed by email on 11 July 2022 that the email of 28 June 2022 were her submissions.

BACKGROUND

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

[5] The Applicant's application for an individual salesperson's licence was approved on 29 July 2021.

[6] 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.

[7] On 30 July 2021 the Real Estate Agents Authority (the Authority) emailed the Applicant outlining five important steps to take in relation to her new licence. One of those steps was planning her CPD. It was recorded that if the licence had been received between 1 January 2021 and 31 August 2021 then CPD was required to be completed by 31 December 2021.

[8] On 14 January 2022, the Authority wrote to the Applicant by email to notify her that the Authority did not have a record that she had completed the requisite CPD for 2021. The correspondence reminded the Applicant that if she did not complete her 2021

CPD she would no longer be able to carry out real estate work and the Authority would be required to cancel her licence.

[9] On 6 May 2022, the Authority sent the Applicant a letter, via email, from the Registrar advising her of the Registrar's intention to cancel her licence due to non-compliance with CPD requirements. The Applicant was given 10 working days to respond and an opportunity to complete training in the next 10 working days. A link to a list of approved training providers was provided. No response was received from the Applicant.

[10] On 23 May 2022, the Authority sent a letter to the Applicant by email advising her that her licence was cancelled on the basis that she had not completed the requisite continuing education, pursuant to s 54(d) of the Act. The email advised that the Applicant would not be entitled to apply for a new licence for a period of five years from the date of cancellation.

[11] On 1 June 2022, the Applicant called the Authority to discuss the cancellation. The Authority advised her that she cannot renew or reapply for five years. She was also advised that she could contact the Tribunal about reviewing the decision and write a letter to the Registrar explaining why she did not complete her CPD.

[12] On 10 June 2022 the Applicant sought review by the Tribunal of the Registrar's decision of 23 May 2022 to cancel her licence.

JURISDICTION

[13] 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.

[14] 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.

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

SUBMISSIONS

The Applicant

[16] As referred to above, the Applicant emailed the Tribunal on 28 June 2022 with her submissions.

[17] The Applicant submits that her friend advised her that she was exempt from completing CPD for the year that she received her licence. She submits that she should have "double checked" as she now knows that this was not the case.

[18] She further submits that during 2021 and 2022 she had major eye surgery on her left eye (two operations in total) which caused her some discomfort and was instructed to minimise her screen time which meant she missed the emails from the Registrar.

The Authority

[19] The Authority submits that It is not in dispute that the Applicant failed to complete her continuing education. She noted in her application for review that it was her understanding that as she had only just completed her course she was exempt and that she knows now this is not the case. However, the Authority submits that this does not enable the Registrar to exercise a discretion in relation to cancelling her licence.

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

[21] 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.

[22] 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.¹

[23] 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:²

[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.

[24] The Authority submits that having not received confirmation that the Applicant had completed her continuing education for 2021, the Registrar was required to cancel her licence. They submit that so long as the correct process was followed, the Tribunal must confirm the Registrar's decision.

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

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

¹ *Callaghan v Registrar of the Real Estate Agents Authority* [2019] NZREADT 47 at [18].

² *Troughton v Registrar of the Real Estate Agents Authority* [2019] NZREADT 43.

- (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.

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

DISCUSSION

[27] 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 her failure to complete the required continuing education for 2021.

[28] The Applicant claims she missed the emails due to eye surgery. However the operations were on 29 June 2021 and 15 February 2022, and the emails from the Registrar were well outside these dates. There was plenty of time in the intervening periods for the Applicant to have read these emails.

[29] The Tribunal has made it clear in a number of decisions that s 54 is in the imperative. The Tribunal's powers on review are no wider than those given to the Registrar. If one of the provisions set out in s 54 applies, the Registrar "must" cancel the relevant licence. If the Registrar has followed the correct procedure, the Tribunal cannot interfere with the Registrar's decision.³

OUTCOME

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

³ *Troughton* at [24], *Callaghan* at [18].

[31] 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.

C A Sandelin
Chairperson

P N O'Connor
Member

F J Mathieson
Member