

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2022] NZREADT 24

Reference No: READT 013/2021

IN THE MATTER OF

A charge laid under s 91 of the Real Estate Agents Act 2008

BROUGHT BY

**COMPLAINTS ASSESSMENT COMMITTEE
2103**

AGAINST

DAVID SHARMA
Defendant

Hearing in Auckland on 2 November 2022

Tribunal:

D J Plunkett (Chair)
G J Denley (Member)
F J Mathieson (Member)

Appearances:

Counsel for the Committee:
The Defendant:

S McMullan
Self-represented

DECISION
Dated 14 November 2022

INTRODUCTION

[1] David Sharma, the defendant, was at the relevant time a licensed real estate agent under the Real Estate Agents Act 2008 (the Act). He is no longer licensed.

[2] Mr Sharma has been charged by Complaints Assessment Committee 2103 (the Committee) with misconduct under s 73(a) of the Act (disgraceful conduct):

Particulars

1. Mr Sharma was a director and shareholder of Property Management Out West Limited, a property management company trading as Ray White Henderson.
2. Property Management Out West Limited collected rental bond payments from tenants in connection with the management of properties, as listed in the schedule.
3. Mr Sharma was required by s 19 of the Residential Tenancies Act 1986 to forward those bond payments collected by Property Management Out West Limited to Tenancy Services of the Ministry of Business, Innovation and Employment (Tenancy Services).
4. Mr Sharma did not pay the bond money collected for the properties on the schedule to Tenancy Services.
5. Mr Sharma has not accounted for the unpaid bond payments.
6. Mr Sharma retained the bond money within his businesses, for use by the businesses as required.

[3] The schedule attached to the charge identifies 49 properties involving \$92,210 in bond monies.¹

[4] Mr Sharma admits the charge.

BACKGROUND

[5] Mr Sharma owned and operated a property management company in Auckland known as Property Management Out West (the management company), trading as Ray

¹ Amended charge, Appendix 2 to Mr McMullan's opening submissions (13 September 2022).
Leave to amend granted at hearing 2 November 2022.

White Henderson. He ran the business through a franchise arrangement with Ray White New Zealand (Ray White). Between 2012 and 2018, Mr Sharma received bonds from tenants in 49 properties, totalling \$92,210, which he failed to forward to Tenancy Services, or otherwise account for to the tenant or the landlord. Instead, he used the money within his property management and/or real estate businesses.

[6] The Committee called the following witnesses.

Ms Galuszewski

[7] Amanda Galuszewski attended the hearing and confirms the truth of her brief of evidence dated 9 June 2022. She also confirms the truth of what she told the Authority's investigators on 14 February 2018, 24 October 2018 and 2 July 2020.

[8] Ms Galuszewski previously worked as a property manager for the management company between 2013 and December 2016. Mr Sharma owned and operated the management company. Employees reported to him. He had control over all matters, including finances.

[9] As part of its services, the management company arranged tenants for the properties. They would be placed in the property once the bond money had been received by the company.

[10] On a number of occasions while Ms Galuszewski was working for the management company, she became aware that bond payments received from tenants or landlords (on the tenants' behalf) had not been lodged with Tenancy Services. She knew this because after the tenants moved out and signed a bond refund form, either the tenant or the landlord would discover that the bond payment had not been lodged with Tenancy Services and would contact her.

[11] The missing bond payments were raised with Mr Sharma who would authorise the accounts staff to belatedly lodge the relevant bond payments with Tenancy Services or to pay the bond money to the tenant directly. This happened a lot.

[12] Ms Galuszewski says she was personally not involved in the financial process after the bond payments were received by the management company. Property managers had nothing to do with the finance side. As a property manager, she did not have the ability or authority to pay the bond money to Tenancy Services herself, because she had no access to or authority over the management company's account. It was Mr Sharma who was in charge of everything financial. He was responsible for ensuring

that bond payments were lodged with Tenancy Services. He would direct the payments as needed.

[13] When the issues came up with landlords or tenants, such as missing bond payments, she referred them all to Mr Sharma. He would tell her he had sorted out the issue, but she did not know the details of his responses.

[14] Towards the end of her time at the management company, Ms Galuszewski told tenants to follow up with Tenancy Services if they had not obtained information about their bond payments. It had become apparent that the bonds were not being lodged as the tenants were not getting their letter from Tenancy Services acknowledging payment.

[15] Even after Ms Galuszewski had left the management company, she was being contacted in 2018 by tenants about bond payments which had not been lodged with Tenancy Services. She directed them to Ray White's head office.

Ms Seko

[16] Sina Jeweline Seko attended the hearing and confirms the truth of her brief of evidence dated 23 June 2022. She also confirms the truth of her interview with the Authority's investigator on 10 September 2018.

[17] Ms Seko worked as the office administrator for the management company from December 2012 until February 2018. This included property management and an accounts role. Ms Seko reported directly to Mr Sharma. It was her role to prepare the mid-month and end of month payment schedules and provide them to Mr Sharma for his approval.

[18] Ms Seko recalls one of the property managers, Ms Galuszewski, receiving phone calls from people complaining about bond payments not being lodged with Tenancy Services. After Ms Galuszewski left the management company, Ms Seko was contacted by tenants and landlords about bond payments. She referred them to Mr Sharma who told her he would sort them out.

[19] Once the bond money was received by the management company from tenants or landlords, Mr Sharma issued and signed off the bond cheques lodged with Tenancy Services. She did not deal with the bond payments personally. She did not have authority over the accounts and believed only Mr Sharma was authorised to do so.

Mr Snelling

[20] Zac Snelling attended the hearing and confirms the truth of his brief of evidence dated 22 July 2022. He also confirms the truth of his interview with the Authority's investigator on 23 November 2018.

[21] Mr Snelling has been head of property management at Ray White since 2013.

[22] Ray White has individual franchise arrangements with various companies across New Zealand. Franchises are independently owned and operated.

[23] Mr Sharma operated the management company under a franchise agreement with Ray White. He advised Ray White on about 19 December 2017 that he intended to close the company and terminate the franchise agreement on 31 January 2018.

[24] On about 16 February 2018, Mr Sharma notified various landlords that the management company was going into voluntary liquidation. It was around this time that multiple tenants and landlords contacted Ray White raising issues about the company's failure to lodge bond payments with Tenancy Services.

[25] Ray White began assessing the situation and engaged an accounting firm as auditors. Mr Sharma initially gave consent to access the management company's accounts, but this was subsequently revoked by the liquidators.

[26] Documents for each property being managed by the management company were recorded in the software of Palace Property Management Software (Palace), which is independently operated by franchisees at Ray White. Palace provided Ray White with a list of landlord names, contact information and property addresses which enabled Mr Snelling to communicate with the landlords about bond payments.

[27] Ray White decided to absorb the debt arising from the failure to lodge with Tenancy Services bonds paid to the management company. The landlords were informed that Ray White would provide reparations for such bond payments.

[28] On about 19 February 2018, Mr Snelling visited the management company's offices and collected the physical property management files. He worked with each landlord or tenant individually to identify the properties where bonds had been paid to the management company but not lodged with Tenancy Services. The landlords would contact the liquidators who had exclusive access to the management company's account information. The liquidators confirmed with the landlords the amounts which had been paid to the management company. Ray White also liaised with Tenancy Services to

confirm which bond payments had not been filed. Bonds were lodged by Ray White with Tenancy Services for properties where the tenants were still residing at the relevant property.

[29] There were 73 bonds lodged for managed properties and 19 bonds through private landlords, a total of 92 affected properties. The total amount which Ray White paid to reimburse bond payments was \$173,630. This does not include costs of \$9,826 incurred by Ray White engaging with the auditors and liquidators.

[30] Mr Snelling produced to the Tribunal a set of spreadsheets of the affected properties.² They identify each property and show details such as the bond amount, the date of payment by Ray White to Tenancy Services and the circumstances.

[31] Mr Snelling explained that bonds were not lodged with Tenancy Services for all the 92 affected properties as Ray White sometimes reimbursed the landlord directly. This occurred where the tenant had already left the property, or the landlord had personally paid the bond direct to Tenancy Services (even where the tenant had paid the management company) or the landlord had reimbursed the tenant for the missing bond payment.

Ms Waddell

[32] Suzanne Waddell attended the hearing and confirms the truth of her brief of evidence dated 21 July 2022. She also confirms the truth of her interview with the Authority's investigator on 10 September 2018.

[33] Ms Waddell worked at Mr Sharma's real estate agency and also at the management company between 2010 and September 2013, assisting with accounts and administration. She continued to assist him with accounts on a casual basis from September 2013 to 2017. She did not have any involvement with bond payments after 2013.

[34] Ms Waddell states that:

1. After the bond payments had been received from the tenants or landlords, the practice was for a separate cheque to be issued by the management company and after being signed by Mr Sharma, it was sent to Tenancy Services. Mr Sharma was the only person who issued the cheques.

² Committee's bundle of documents at 747–752.

Ms Waddell arranged the paperwork. The paperwork, including the cheques, was only sent out when Mr Sharma authorised this to happen.

2. Mr Sharma was the only one with access to and control of the bank accounts.
3. When Ms Waddell worked with Mr Sharma, she recalled occasions where property managers had to follow up about bond payments not having been lodged with Tenancy Services. This would happen every other month.

Ms Leuluai

[35] Christine Leuluai attended the hearing. She had already sworn an affidavit on 10 August 2022.

[36] Ms Leuluai has been the team leader in tenancy bonds at Tenancy Services since November 2012. She is responsible for overseeing the administrative functions relating to residential tenancy bonds.

[37] Tenancy Services hold the bond payments on behalf of tenants while they are renting. If no issue arises during a tenancy, the tenant will be refunded the bond at the end of the tenancy.

[38] Mr Snelling contacted Ms Leuluai in mid-2018. He told her that the management company had failed to lodge bond payments with Tenancy Services. It was agreed that Ray White would provide the bond lodgement form and a separate cheque for each affected tenancy to Tenancy Services.

[39] Ms Leuluai was provided by Mr Snelling with a list of bond payments that had been made by Ray White for affected tenancies. It accorded with the information held by Tenancy Services, apart from one property (where Ray White had made a second bond payment for a property for which a bond had already been lodged, so the overpayment was refunded to Ray White).

[40] Ms Leuluai produced to the Tribunal a schedule of 64 properties showing *inter alia* the tenancy start date for each (from 18 January 2012 to 14 August 2018) and the bond lodgement date for each (22 June to 8 November 2018). The latter is the date the bond was lodged by Ray White.³

³ Committee's bundle of documents at 850–851.

Mr Callahan

[41] Rangi Kahu Callahan attended the hearing. He had already sworn an affidavit on 9 August 2022.

[42] Mr Callahan is an investigator with the Real Estate Agents Authority (the Authority). The investigation commenced in November 2017 after the Authority received information alleging that Mr Sharma's property management company had failed to lodge rental bonds received from tenants with Tenancy Services. Specifically:

1. On 13 February 2018, an investigator from the Authority interviewed Mr Sharma. The transcript of that interview has been provided to the Tribunal.
2. Current and former staff at Mr Sharma's property management company were also interviewed; Ms Galuszewski, Ms Waddell, Ms Seko, Mr Snelling and others. The transcripts of these interviews have been provided to the Tribunal.
3. Mr Sharma was provided with disclosure of the documents on the Committee's investigation file of 23 September 2018. He was invited to respond, but he did not do so apart from attending the interview on 13 February 2018.
4. The Police advised on 25 September 2020 that the investigation of Mr Sharma would not be continued.
5. The landlords and tenants of 13 properties managed by the management company were interviewed. Signed statements were obtained and have been provided to the Tribunal.
6. Between 1 April 2022 and 1 June 2022, Mr Callahan took steps to contact each of the landlords and tenants by phone or by email to confirm the truth of their previous statements. A senior investigator with the Authority assisted with these enquiries. Mr Callahan identifies the landlords and tenants who confirmed the truth of their statements.

[43] There is an earlier statement from Mr Callahan (17 August 2021). He states that during their investigation, they identified 49 properties for which bond payments were made by tenants but no bond was lodged with Tenancy Services. Thirteen of those properties, considered representative, were selected for review and, where available, the landlords and tenants were interviewed and the rental documentation obtained. The documents for these 13 properties are attached to Mr Callahan's statement. The investigation by Mr Snelling found the properties for which there were outstanding bonds, including the remaining 36 properties identified by the Authority.

[44] Attached to Mr Callahan's affidavit is the detailed documentation (including statements) concerning the 13 representative properties. The documentation for each of these properties is similar. We have focussed on three of them.

*Lake Panorama Drive*⁴

[45] The landlords were interviewed by the Authority's investigator on 9 July 2020. They contracted the management company in August 2012. The relevant tenancy agreement was signed on 1 March 2016. The landlords dealt with Ms Galuszewski, Mr Sharma and one other person. The rent payments were paid late. They had to email and call Mr Sharma to get paid. In early 2018, they changed to another property agent as the payment schedule did not improve.

[46] The landlords said the bond money was not lodged with Tenancy Services. After the management company went into liquidation, they found out there were outstanding rent payments and the bond had not been lodged. Ray White agreed to pay the bond money, but not the rent. The landlords claimed \$10,507.11 in the liquidation (claim signed 3 April 2018), including \$2,320 in bond money.

[47] There is a statement (24 May 2018) from the landlords stating that they understood the tenant had paid \$2,320 in bond money to Mr Sharma or the management company.

[48] The tenant was interviewed on 26 February 2020 and signed a statement on 8 May 2020. She had paid \$2,320 in bond money, along with \$580 in rent and a letting fee of \$667, a total of \$3,567, in cash to Ms Galuszewski. She received a receipt (two receipts dated 1 and 16 March 2016 have been provided to the Tribunal). They set up a regular rental payment to Ray White.

⁴ Committee's bundle of documents at 144–184.

[49] The tenant first became aware of the bond not being lodged with Tenancy Services when the management company closed. The landlords then told her they had not been receiving the rent, but the tenant said it was being paid automatically to the management company.

[50] The property documentation shows a management authority was signed by the landlords on 4 August 2012. Mr Sharma's standard management authority signed by each landlord had a term concerning the bond:⁵

In particular I/we authorize and instruct you to do the following:

a. ...

b. To prepare and sign Tenancy Agreements on our behalf and collect and lodge a minimum of 4 weeks rent as bond with the Department of Building and Housing, and at the conclusion of the tenancy to sign the bond refund form and refund to the tenant such sum as we deem fair and reasonable.

...

[51] The rental agreement shows the rental commenced on 30 March 2016, specifying a bond of \$2,320, with \$3,567 due on signing.

[52] A bond lodgement form from Tenancy Services signed by the tenants on 1 March 2016 shows \$2,320 was the expected bond. The entry for "Payment enclosed" is blank. A letter from Tenancy Services to the tenant (26 June 2018) shows the sum of \$2,320 was paid on 19 June 2018.

*Anich Road*⁶

[53] The landlord was interviewed and made a statement to the Authority's investigator on 9 July 2020. The contact with the management company was Ms Galuszewski and another person. The tenant paid bond money of \$1,740. The landlord had assumed that the management company lodged the bond with Tenancy Services, but her tenant said the bond was not lodged. The tenant was informed of that by Tenancy Services. Ray White had since lodged the missing bond. There remained outstanding rent.

[54] The tenant was interviewed on 27 February 2020 and signed a statement on 4 June 2020. She said she signed the tenancy agreement with Ms Galuszewski in Ray White's office. She paid \$1,740 in bond money and received a receipt. She thinks she did this at the same time she signed the tenancy agreement.

⁵ Committee's bundle of documents at 150.

⁶ Committee's bundle of documents at 185–210.

[55] The tenant said she never got a letter from Tenancy Services stating that the bond money had been lodged. She rang Tenancy Services in about February 2018 and it was confirmed that no bond had been lodged. After she contacted the liquidator, the bond was “recovered” and lodged with Tenancy Services.

[56] The property documentation shows a management agreement signed by the landlord on 7 May 2015. The tenancy agreement was signed by the parties on 12 June 2015 and commenced on 2 July 2015. The bond was \$1,740.

[57] The bond lodgement form (undated) shows \$1,740 was expected to be paid, but the entry for “Payment enclosed” is blank. The bond was not paid until 19 June 2018.⁷

*Elcoat Avenue*⁸

[58] The landlord was interviewed on 2 July 2020 and signed a statement on 10 July 2020.

[59] The landlord said she signed the management agreement with the management company on 12 May 2016. Her main contact was Ms Galuszewski. She had assumed they had collected the bond and lodged it with Tenancy Services. The tenants moved out in December 2018.

[60] Towards the end of 2017, the landlord realised some rent payments were missing. She contacted Mr Sharma who told her there must have been some mistake. The landlord recounts her experience obtaining payment of the rent. When Ray White advised her to check if the bond had been lodged with Tenancy Services, she did so and was informed it had no record of a bond. Ray White remedied the bond issue. She was still owed rent.

[61] The tenant was interviewed on 26 February 2020 and signed a statement on 14 June 2020. When she signed the tenancy agreement, she had to pay two weeks bond (\$2,080). She thinks she paid by eftpos and got a receipt. When she rang Tenancy Services, at the request of the landlord, she found that no bond money had been paid. They moved out before Christmas 2018 and got their bond back. The landlord said she was not receiving rent, but the tenant said they did not miss any rent payments.

⁷ Committee’s bundle of documents at 851.

⁸ Committee’s bundle of documents at 288–321.

[62] The property documentation shows a management agreement with the management company was signed by the landlord on 12 May 2016. The tenancy agreement commenced on 20 May 2016 and specified a bond of \$2,080. It was signed by the tenant on 13 May 2016.

[63] A bond lodgement form (10 May 2016) specified expected bond money of \$2,080, but the entry for payment enclosed was blank. A second bond lodgement form (6 June 2018) showed \$2,080 was lodged.

Mr Sharma

[64] The Committee has produced to the Tribunal a transcript of an interview of Mr Sharma on 13 February 2018 by an investigator from the Authority.⁹

[65] Mr Sharma said he had given up his company licence because of his health. He still had his personal licence. The property management company had previously 160 to 180 properties, but was down to 55.

[66] It was acknowledged by Mr Sharma that he was responsible for lodging the bonds, along with the accounts person.

[67] Mr Sharma acknowledged there had been a complaint from a particular client about missing rental payments.¹⁰ He said he paid all the money back. As for the bonds, they were actually found in the folder and were lodged many years later. This was an error on their part, as they did not keep the paperwork right.

[68] Mr Sharma denied any other issues with bonds. After this problem, they undertook a reconciliation and they found one which was about a year old which was sorted out. He had done a full reconciliation. There was no money owing. For those properties where he had sold the management rights or given a property back, everything would be cleared.

[69] While Mr Sharma initially denied that any other landlords had contacted him about money owing, he later accepted that certain other named landlords had contacted him. He agreed that three or four others, maybe half a dozen, had said money was owing, about \$2,000 to \$3,000 each. Some were picked up when he sold the business. He had paid most of them.

⁹ Committee's bundle of documents at 24–35.

¹⁰ The Tribunal notes this is not one of the properties identified by the charge before the Tribunal.

[70] According to Mr Sharma, the money was not used in other parts of the business, but was paid to other people, such as creditors.

[71] When asked by the Authority's investigator why bonds were not paid over at the time, Mr Sharma said it was "just the system".

[72] Mr Sharma attended the hearing and gave brief evidence. As noted in earlier Minutes, the Tribunal records that Mr Sharma is unwell and gave evidence from his bed via AVL. Assistance was provided by the rest home manager. Mr Sharma accepts the Committee's allegation that bond money paid to him was not paid to Tenancy Services (49 properties involving \$92,210). He said mistakes were made. Mr Sharma apologises for the stress caused to all, including his family. If he had the chance, he would get in touch with the others and apologise.

CHARGE

Jurisdiction and principles

[73] This matter concerns a charge of misconduct against a licensee brought by a Committee.

[74] Misconduct is defined in the Act:

73 Misconduct

For the purposes of this Act, a licensee is guilty of misconduct if the licensee's conduct—

- (a) would reasonably be regarded by agents of good standing, or reasonable members of the public, as disgraceful; or
- (b) constitutes seriously incompetent or seriously negligent real estate agency work; or
- (c) consists of a wilful or reckless contravention of—
 - (i) this Act; or
 - (ii) other Acts that apply to the conduct of licensees; or
 - (iii) regulations or rules made under this Act; or
- (d) constitutes an offence for which the licensee has been convicted, being an offence that reflects adversely on the licensee's fitness to be a licensee.

[75] The Tribunal may regulate its procedures as it thinks fit, though it is subject to the rules of natural justice.¹¹

[76] The Tribunal may receive any document or information that may, in its opinion, assist it, whether or not that document or information would be admissible in a court.¹² Subject to that and other matters, the Evidence Act 2006 applies.¹³

[77] It is the civil standard of proof, the balance of probabilities, that is applicable.¹⁴ However, the quality of the evidence required to meet that standard may differ in cogency, depending on the gravity of the charges.¹⁵

[78] The charge of misconduct is framed as disgraceful conduct under s 73(a). This has been considered by the High Court in *Morton-Jones*:¹⁶

[28] Charges 1, 2 and 3 alleged “disgraceful conduct”. On the meaning of this expression, the Tribunal referred to a Tribunal decision in *CAC v Downtown Apartments Ltd*.⁵ In that case the Tribunal said:

[55] The word disgraceful is in no sense a term of art. In accordance with the usual rules it is to be given its natural and popular meaning in the ordinary sense of the word. But s 73(a) qualifies the ordinary meaning by reference to the reasonable regard of agents of good standing or reasonable members of the public.

[56] The use of those words by way of qualification to the ordinary meaning of the word disgraceful make it clear that the test of disgraceful conduct is an objective one for this Tribunal to assess. See *Blake v Preliminary Proceedings Committee of the Medical Council of New Zealand*, [1997] 1 NZLR 71.

[57] The ‘reasonable person’ is a legal fiction of common law representing an objective standard against which individual conduct can be measured but under s 73(a) that reasonable person is qualified to be an agent of good standing or a member of the public.

[58] So while the reasonable person is a mythical ideal person, the Tribunal can consider, inter alia, the standards that an agent of good standing should aspire to including any special knowledge, skill, training or experience such person may have when assessing the conduct of the ... defendant.

¹¹ Real Estate Agents Act 2008, s 105.

¹² Section 109(1).

¹³ Section 109(4).

¹⁴ Section 110.

¹⁵ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [101]–[102], & [112].

¹⁶ *Morton-Jones v Real Estate Agents Authority* [2016] NZHC 1804.

[59] So, in summary, the Tribunal must find on balance of probabilities that the conduct of the ... defendant represented a marked or serious departure from the standards of an agent of good standing or a reasonable member of the public.

[29] Subject to one qualification I agree with that analysis. The qualification relates to the observation in [59]. It is a restatement of what is clearly expressed in s 73(a). In my opinion the restatement does not accurately reflect the words used. If the charge is under s 73(a) the critical enquiry is whether the conduct is “disgraceful”. Conduct which involves a marked and serious departure from the requisite standards must be assessed as “disgraceful”, rather than some other form of misconduct which may also involve a marked and serious departure from the standards. The point is more than one of semantics because s 73 refers to more than one type of misconduct. In particular, s 73(b) refers to “seriously incompetent or seriously negligent real estate agency work”. Work of that nature would also involve a marked and serious departure from particular standards; the standards to which s 73(b) is directed are those relating to competence and care in conducting real estate agency work.

[30] This is not to say that s 73(a) could not apply to work carried out by a licensee so incompetently or negligently as to amount to disgraceful conduct according to the s 73(a) tests. If the work was not real estate agency work, but the person doing the work was a licensee, the appropriate provision for a charge would be s 73(a). This is a point more fully discussed below when considering the appellant’s argument that the Act did not apply to his property management work.

⁵ *Complaints Assessment Committee (CAC 10024) v Downtown Apartments Ltd (in Liq)* [2010] NZREADT 6.

ASSESSMENT

[79] Mr Sharma was a director, shareholder and principal operating officer of a property management company which collected bond monies from tenants. The Tribunal has been given comprehensive documents for 13 of the 49 properties subject to the charge. On the basis of the evidence of Mr Snelling and Ms Leuluai, we accept that bond monies paid to the management company were not lodged with Tenancy Services for all 49 properties.

[80] Mr Sharma accepts that, on his authority, numerous bonds paid to his company were not lodged with Tenancy Services. Nor did he otherwise account for them to the tenant or landlord. Instead, he retained the monies for use within one or more of his businesses. He accepts this involved 49 properties and a total of \$92,210.

[81] The Residential Tenancies Act 1986 provides that the person collecting the bond shall pay it to Tenancy Services and that it is unlawful not to do so:

19 Duties of landlord on receipt of bond

- (1) Where any person pays to the landlord, or to any other person on behalf of the landlord, any amount by way of bond (whether the amount is for the whole or part of the bond), the following provisions shall apply:

- (a) the person who receives the payment shall forthwith give to the payer a written receipt, signed by that person, showing—

...

- (b) the landlord shall, within 23 working days after the payment is made, forward the amount received to the chief executive, together with a statement of particulars in the approved form signed by the landlord and the tenant.

...

- (2) Failure to issue a receipt, or to forward any amount received, in accordance with this section is hereby declared to be an unlawful act.

[82] The standard management authority of the management company signed by each landlord also required Mr Sharma to ensure that the bond was lodged with Tenancy Services (previously the Department of Building and Housing).

[83] It is self-evident that what is effectively the theft of just over \$92,000 in almost 50 transactions is a marked and serious departure from the expected standard of a professional real estate agent, which would be regarded by agents of good standing and by reasonable members of the public, as disgraceful. As the Tribunal has observed before, honesty is essential to achieve the purpose of the Act, particularly the maintenance of public confidence in the industry.¹⁷

[84] It is never too late to admit wrongful conduct and to apologise and it is to Mr Sharma's credit that he did so at the hearing.

ORDERS

[85] The charge of misconduct (disgraceful conduct) under s 73(a) of the Act is upheld.

[86] The penalty orders will be determined on the papers. The Committee's written submissions are to be filed and served by **13 December 2022**. Mr Sharma's submissions are to be filed and served by **13 January 2023**.

[87] Pursuant to s 113 of the Act, the Tribunal draws the parties' attention to s 116, setting out the right of appeal to the High Court.

¹⁷ *Complaints Assessment Committee 409 v Ganesh* [2018] NZREADT 19 at [115].

PUBLICATION

[88] Having regard to the interests of the public, it is appropriate to order publication of this decision.¹⁸

D J Plunkett
Chair

G J Denley
Member

F J Mathieson
Member

¹⁸ Real Estate Agents Act 2008, s 108.