

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2022] NZREADT 26

Reference No: READT 026/2021

IN THE MATTER OF

Charges laid under s 91 of the Real Estate Agents Act 2008

BROUGHT BY

**COMPLAINTS ASSESSMENT COMMITTEE
2102**

AGAINST

XIAO BARRY HE
First Defendant

AND

DONGNI ANTHONY AN
Second Defendant

Hearing in Auckland on 11 and 12 July 2022

Tribunal:

C A Sandelin (Deputy Chair)
G J Denley (Member)
P N O'Connor (Member)

Representation:

The Committee
The First Defendant:
The Second Defendant:

S A H Bishop / K L Kensington
K Perry / J Tian
M J Hodge

DECISION OF THE TRIBUNAL (PENALTY)
Dated 22 November 2022

INTRODUCTION

[1] In a decision issued on 15 August 2022 the Tribunal found Mr He and Mr An guilty of misconduct under s 73(b) of the Real Estate Agents Act 2008 (the Act) (the Tribunal's substantive decision). The Tribunal has now received submissions as to penalty.

BACKGROUND

[2] The background facts are set out in the Tribunal's substantive decision and are summarised below.

[3] At the time of the relevant events both Mr He and Mr An were licensed salespersons under the Act. Both were engaged by Barfoot and Thompson (Barfoots), with Mr He at the Royal Heights branch and Mr An at Hobsonville.

[4] On 16 January 2020, Mr He obtained a sole agency listing for the Property.

[5] Mr An introduced Mr and Mrs Sharma (the Purchasers) to the Property and on 23 January 2020, Mr He and Mr An prepared and presented an offer from the Purchasers to Mr and Mrs Marshall and Mr and Mrs Lal (the Vendors).

[6] An Agreement for Sale and Purchase (the first ASP) was prepared and presented in electronic form on Mr He's iPad, accepted by the Vendors, signed by all parties and then sent electronically via Apple's Airdrop facility to Mr An. On 24 January 2020, Mr An went to the Property, obtained the final signature of one of the Vendors, dated the first ASP and emailed it back to Mr He.

[7] On 28 January 2020, the first ASP was cancelled as the finance condition was not satisfied.

[8] On 11 February 2020, at their request, Mr He assisted the Purchasers to prepare another offer for the Property. By this time, the Property was subject to another contract, so the new offer was being prepared as a backup offer (the backup ASP).

[9] As Mr Sharma was away for a few weeks, Mr He and the Purchasers agreed to amend a previous undated version of the first ASP which had been signed and initialled by all the parties.

[10] The Purchasers and Mr He discussed some amendments to the conditions of the offer and Mr He made these amendments on his iPad as follows:

- (a) By changing the finance condition to “No” on the front page;
- (b) By changing the LIM condition to “No” on the front page;
- (c) By changing the building condition from 15 working days to 5 working days;
and
- (d) By inserting a backup clause (the backup clause) as clause 20.

[11] Mrs Sharma initialled the building condition and signed the backup clause. Mr He did not delete the signatures and initials of all parties when drafting the backup ASP.

[12] The backup ASP was presented to two of the vendors by Mr He on 11 February 2020 and was rejected. Later that evening, Mr He suggested to the Purchasers that they increase the price by \$5,000 by reducing the commission by \$5,000.

[13] The next morning on 12 February 2020, one of the vendors, Mr Lal, spoke with Mr He and agreed orally to the increased price. At 8:30 am, Mr He emailed a copy of the backup ASP to Mr An. The backup ASP retained the signatures and initials of all parties from the first ASP and showed the new purchase price and settlement date against those initials. Although the backup clause had been signed by Mrs Sharma, it had not been signed by any of the other parties.

[14] On the morning of 12 February 2020, Mr He spoke to Mr An on three occasions by telephone:

- (a) at 8:30 am on 12 February 2020 for a 1 minute duration,
- (b) at 8:35 am on 12 February 2020 for a 1 minute duration; and
- (c) at 9:17 am on 12 February 2020 for a 3 minute duration.

[15] What was discussed in those calls was contested as between the parties, and this was the subject of evidence at the hearing before the Tribunal. Mr He says that he asked Mr An to obtain the signatures and initials of the Vendors as this was Mr An’s role as selling agent. Mr An said that Mr He told him to insert the initials.

[16] Mr An electronically inserted the initials of the Purchasers and Vendors into the backup clause in place of Mrs Sharma’s signature and dated the backup ASP. He then emailed the backup ASP to Mr He at 11.32 am. The backup ASP was processed by Mr An through Barfoots Hobsonville.

[17] The Property was subsequently sold to other purchasers, so the backup ASP fell over.

[18] On 16 February 2020 the Vendors requested a copy of the backup ASP from Mr He, as they had not received a copy. Mr He subsequently emailed them a copy that same day.

[19] The Vendors had not signed the backup ASP, nor had they been approached by either Mr He or Mr An to use their previous signatures/initials. They complained to Barfoots who made a report to the Real Estate Agents Authority (the Authority).

[20] On 18 February 2020 Mr He prepared a timeline of events for Barfoots in which he stated that on 12 February 2020 he had met with the Vendors at the Property and that “everyone signed in the ipad”. Mr He later confirmed to Barfoots and the Authority that this was not correct and he had not met with the Vendors on 12 February.

[21] The Complaints Assessment Committee (the Committee) inquired into the allegations, investigated and determined to lay charges against Mr He in accordance with s 91 of the Act. During the course of the investigation, the Committee became aware of the conduct of Mr An in electronically inserting the initials of the parties and therefore decided to inquire into that allegation under s 78(b) of the Act.

TRIBUNAL’S SUBSTANTIVE DECISION

Mr He

[22] The Committee charged Mr He with misconduct under s 73(b) of the Act in that his conduct constituted seriously incompetent or seriously negligent real estate agency work. In the alternative, Mr He was charged with unsatisfactory conduct under s 72(b) of the Act.

[23] Mr He accepted he engaged in unsatisfactory conduct by not removing the signatures of the Vendors from the ASP prior to sending the backup ASP to Mr An. Mr He denied, however, that the conduct amounted to seriously negligent or incompetent real estate agency work.

[24] The Tribunal did not find Mr He to be a reliable witness. Mr He gave inconsistent accounts in relation to the events of 12 February 2020. He was inconsistent in his version of events to Barfoots, and to the Committee. Mr He initially told Barfoots that he met with the Vendors on 12 February to obtain their signatures when this was not true. The Tribunal was not satisfied that Mr He instructed Mr An to actually obtain the signatures

and initials from the Purchasers and Vendors. The Tribunal held that it was more likely that Mr He said nothing to Mr An about the initials and signatures left on the backup ASP and did not request Mr An to obtain fresh signatures and initials from the parties.

[25] The Tribunal held that it was a serious error of judgment for Mr He to have given thought to the signatures on the backup ASP but decide to leave them as he did not have authority to replace them. The Tribunal held that Mr He should have deleted the signatures and initials of all the parties before forwarding the document to Mr An and that Mr He should also have checked the backup ASP before it was processed at Barfoots by Mr An.

[26] The Tribunal held that as an experienced licensee, Mr He should have been aware of his obligations to act in his clients' best interests. He would have appreciated the importance of appropriately handling the sale and purchase agreements and ensuring that real estate agency work is completed competently.

[27] The Tribunal found that Mr He breached his obligations to his vendor clients under rr 5.1, 6.1 and 6.3 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 (the Rules). His actions in his careless dealing with the backup ASP were seriously negligent and such that would bring the real estate industry into disrepute. The Tribunal was therefore satisfied that Mr He's conduct involved a serious departure from acceptable standards and that his conduct constituted seriously negligent or incompetent real estate agency work pursuant to s 73(b) of the Act.

Mr An

[28] The Committee charged Mr An with misconduct under s 73(a) of the Act in that his conduct would be reasonably regarded by agents of good standing, or reasonable members of the public, as disgraceful. In the alternative, Mr An was charged with seriously incompetent real estate agency work under s 73(b).

[29] As with Mr He, the Tribunal did not find Mr An to be a credible witness. The Tribunal was not satisfied that Mr He told Mr An to insert the initials on the backup clause. The Tribunal found that Mr An decided to insert the Vendors' and Purchasers' initials on the backup clause (after deleting Mrs Sharma's signature). The Tribunal held that even if Mr An had been told by Mr He that he should insert the initials at the backup clause, and that was what the parties wanted, that is not approval that the parties have authorised the use of their initials.

[30] The Tribunal held that although fundamentally, the Purchasers and Vendors had all agreed to the terms of the backup ASP, they had certainly not agreed to the addition of their initials/signatures, other than Mrs Sharma. Mr An was experienced enough to know that what he was doing was wrong when he inserted the initials at the backup clause. Mr An's failure to take any steps to check with the parties whether he was acting correctly in inserting the initials was to be taken seriously. Mr An could easily have made his own enquiries of the Purchasers and Vendors to check that they were happy to have their signatures added. He did not do so and as a real estate agent of his experience he should have been well aware of the requirements to obtain the parties' actual signatures on the contract.

[31] The Tribunal was not satisfied that Mr An's actions in inserting the initials into the backup clause were any more serious than Mr He's actions in failing to remove the initials/signatures from the backup ASP. The Tribunal held that although Mr An's actions were a serious departure from the standards required of an agent under the Act, they were not satisfied that his actions were dishonest. Accordingly the Tribunal did not find Mr An guilty of disgraceful conduct under s 73(a) of the Act but found him guilty of seriously negligent real estate agency work under s 73(b) of the Act.

JURISDICTION AND PRINCIPLES

[32] The Tribunal's jurisdiction to impose penalty orders if misconduct is proven is set out in the Act:

110 Determination of charges and orders that may be made if charge proved

- (1) If the Disciplinary Tribunal, after hearing any charge against a licensee, is satisfied that it has been proved on the balance of probabilities that the licensee has been guilty of misconduct, it may, if it thinks fit, make 1 or more of the orders specified in subsection (2).
- (2) The orders are as follows:
 - (a) 1 or more of the orders that can be made by a Committee under section 93 (except under section 93(1) (ha)):
 - (b) an order cancelling the licence of the licensee and, in the case of a licensee that is a company, also cancelling the licence of any officer of the company:
 - (c) an order suspending the licence of the licensee for a period not exceeding 24 months and, in the case of a licensee that is a company, also suspending the licence of any officer of the company for a period not exceeding 24 months:
 - (d) an order that a licensee not perform any supervisory functions until authorised by the Board to do so:

- (e) an order, in the case of a licensee who is an employee or independent contractor, or former employee or former independent contractor, that any current employment or engagement of that person by a licensee be terminated and that no agent employ or engage that person in connection with real estate agency work:
- (f) an order that a licensee who is an individual pay a fine not exceeding \$15,000 and order a licensee that is a company pay a fine not exceeding \$30,000:
- (g) where it appears to the Tribunal that any person has suffered loss by reason of the licensee's misconduct and the order is one that a court of competent jurisdiction could make in relation to a similar claim in accordance with principles of law, an order that the licensee pay to that person a sum by way of compensation as is specified in the order, being a sum not exceeding \$100,000.

...

[33] In determining the appropriate penalty, it is relevant to note the purpose of the Act:

3 Purpose of Act

- (1) The purpose of this Act is to promote and protect the interests of consumers in respect of transactions that relate to real estate and to promote public confidence in the performance of real estate agency work.
- (2) The Act achieves its purpose by—
 - (a) regulating agents, branch managers, and salespersons:
 - (b) raising industry standards:
 - (c) providing accountability through a disciplinary process that is independent, transparent, and effective.

[34] The focus of professional disciplinary proceedings is not punishment, but the protection of the public:¹

...It is well established that professional disciplinary proceedings are civil and not criminal in nature. That is because the purpose of statutory disciplinary proceedings for various occupations is not to punish the practitioner for misbehaviour, although it may have that effect, but to ensure that appropriate standards of conduct are maintained in the occupation concerned.

...

The purpose of disciplinary proceedings is materially different to that of a criminal trial. It is to ascertain whether a practitioner has met appropriate standards of conduct in the occupation concerned and what may be required to ensure that, in the public interest, such standards are met in the future. The protection of the public is the central focus.

¹ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151].

...

Lord Diplock pointed out in *Zideman v General Dental Council* that the purpose of disciplinary proceedings is to protect the public who may come to a practitioner and to maintain the high standards and good reputation of an honourable profession.

[35] Professional conduct schemes, with their attached compliance regimes, exist to maintain high standards of propriety and professional conduct not just for the public good, but also to protect the collective reputation and public confidence in the profession itself.²

[36] While protection of the public and the profession is the focus, the issues of punishment and deterrence must also be taken into account in selecting the appropriate penalty.³

[37] The most appropriate penalty is that which:⁴

- (a) most appropriately protects the public and deters others;
- (b) facilitates the Tribunal's important role in setting professional standards;
- (c) punishes the practitioner;
- (d) allows for the rehabilitation of the practitioner;
- (e) promotes consistency with penalties in similar cases;
- (f) reflects the seriousness of the misconduct;
- (g) is the least restrictive penalty appropriate in the circumstances; and
- (h) looked at overall, is the penalty which is fair, reasonable and proportionate in the circumstances.

² *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724–725 & 727; *Bolton v Law Society* [1994] 2 All ER 486 (EWCA) at 492; *Z v Dental Complaints Assessment Committee*, above n 1, at [151].

³ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at [28].

⁴ *Liston v Director of Proceedings* [2018] NZHC 2981 at [34], citing *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354 at [44]–[51] and *Katamat v Professional Conduct Committee* [2012] NZHC 1633, [2013] NZAR 320 at [49].

MR HE – PENALTY

Submissions

[38] On 2 September 2022 the Committee filed submissions as to penalty. They submit that the appropriate penalty for Mr He is censure and a fine of \$8,000.

[39] They submit that the conduct is at a moderate to high level of seriousness. Whilst not a deliberate or dishonest act of forgery of signatures, the effect of Mr He's actions was essentially the same, in that by failing to use a blank ASP, the signatures of the parties appeared on the ASP without the agreement of the Vendors. They submit that Mr He's actions in sending out an ASP containing the signatures of the Vendors without their consent fell well short of the standard expected of a real estate agent.

[40] In the Committee's submission, Mr He was not entirely forthcoming about the full extent of his conduct and the seriousness of it. Accordingly they submit the appropriate penalty is one that ensures Mr He does not repeat this conduct in the future.

[41] In their supplementary submissions dated 17 October 2022, the Committee, as requested by the Tribunal, made submissions as to Mr He's previous disciplinary record and the effect that record may have on the penalty imposed on Mr He.

[42] The Committee referred to two previous findings of unsatisfactory conduct against Mr He, one in 2017 (the 2017 decision) and the other in 2018 (the 2018 decision).

[43] In the 2017 decision involving several licensees, the Committee found Mr He guilty of unsatisfactory conduct as follows:

- (a) Mr He did not provide an adequate appraisal as required by r 10.2 of the Rules;
- (b) Mr He offered the property in question for sale prior to an agency agreement being signed – r 9.6;
- (c) Mr He failed to adequately advise another licensee of a leak disclosure – rr 6.2 and 10.7;
- (d) Mr He failed to adequately disclose that the vendor was a licensee of the agency concerned – s 136 of the Act.

[44] The Committee in the 2017 decision censured Mr He and ordered that he undergo further training (demonstrate knowledge of misleading and deceiving conduct

and misrepresentation) and pay a fine of \$4,000. They considered that cumulatively his conduct was mid-level unsatisfactory conduct but with a higher level of responsibility for the errors that occurred as the listing licensee with information direct from the vendor.

[45] The 2018 decision related to a complaint concerning the failure by Mr He to obtain the vendor's consent in the prescribed form and to provide the vendor with a valuation pursuant to ss 134 and 135 of the Act.

[46] The Committee found Mr He guilty of unsatisfactory conduct by failing to comply with the above sections of the Act. It considered that Mr He "did not appear to understand his obligations in terms of the Act under which licensees operate" and that the breach was "at the upper level on the scale of seriousness". The Committee was mindful that it was Mr He's second unsatisfactory conduct finding and as such, along with censure, imposed a fine of \$8,000 and further training (demonstrate understanding of legal matters affecting real estate licensees).

[47] The Committee submit that whilst the previous findings were not of misconduct, the unsatisfactory findings were at the mid and then upper level of seriousness. They submit that the factual circumstances are not directly analogous to the present misconduct finding but both resulted in the education programmes being imposed as set out above. They submit that those programmes imposed appear to be matters that Mr He continues to fall short in.

[48] The Committee submit that the Tribunal may consider it appropriate, in light of Mr He's disciplinary history, to increase the \$8,000 penalty they submitted in their earlier submissions was appropriate by a "modest amount to reflect the continued breaches by Me He of his obligations as a licenced real estate agent".

[49] Mr He submits that his shortfall in this case was an error of judgment in failing to remove the signatures and initials prior to reworking the first ASP, and prior to sending it on to Mr An. Mr He submits that there is no suggestion that his actions were for personal gain or dishonest in any way. Mr He submits that to the contrary, he was trying to help the purchasers put forward an offer under urgent circumstances. In hindsight, Mr He now appreciates that despite any time pressure from clients, what he did was not an acceptable practice. Mr He submits that given that he received verbal agreement from all the parties in relation to the backup ASP, the actual risks were relatively low.

[50] Mr He also says that the 2017 decision and the 2018 decision should not have any bearing on the appropriate penalty that ought to be ordered against Mr He in the present case.

[51] Mr He submits that the complaints relating to the 2017 decision and the 2018 decision are instances “of unrelated discrete shortfalls in Mr He’s career in the industry”. Mr He has completed both standards of training imposed by the Committee and is grateful for this further education as it helps him better understand his professional obligations as a licensee.

[52] Mr He says that he has had no further complaints made against him in the last four years and he disagrees with the Committee’s submission that the further training completed by him “appear to be matters that Mr He continues to fall short in”. Mr He submits that the Tribunal found that his failure to remove signatures and initials on the backup ASP was an error in judgment and that that was a serious departure from acceptable standards and unrelated to the two previous complaints.

[53] Mr He accepts that the 2017 decision and the 2018 decision mean that he does not have a clean disciplinary record as a mitigating factor, however those two complaints should not then become an aggravating factor.

[54] Mr He submits that his conduct sits around the middle range of s 73(b) misconduct and a starting point of \$8,000 is appropriate. However in mitigation, Mr He submits that he had accepted from the beginning that his conduct was unacceptable, he pleaded guilty to the alternative charge of unsatisfactory conduct at first instance and cooperated with the investigation from the start.

[55] Mr He submits that taking into account the mitigating factors an appropriate fine would be in the region of \$4,000 to \$5,000 along with a censure.

Discussion

[56] We consider Mr He’s previous disciplinary record to be an aggravating factor. The previous disciplinary history of a licensee is relevant to penalty.⁵ The principles were summarised in *Ellis v Auckland Standards Committee* 5:⁶

[21] The Tribunal recognised that, in terms of penalty, the relevant principles were those set out in *Daniels v Complaints’ Committee 2 of the Wellington District Law Society* and *Hart v Auckland Standards Committee 1 of the New Zealand Law Society*, namely, that its intervention was to be the “least restrictive” and that it was to consider:

- (a) The nature and quality of the misconduct established in the particular case.

⁵ *Hart v Auckland Standards Committee 1 of the New Zealand Law Society* [2013] NZHC 83, [2013] 3 NZLR 103 at [188].

⁶ *Ellis v Auckland Standards Committee* 5 [2019] NZHC 1384.

- (b) Previous disciplinary history, including earlier misconduct of a similar type (as a possible indicator that striking off is the only effective means of ensuring protection of the public in the future).
- (c) Any evidence of remorse or insight.
- (d) The need for deterrence.
- (e) Any aggravating or mitigating features.

[57] We do not consider the previous complaints against Mr He to be conduct of a similar type to the present case, however it is concerning that Mr He has continued to breach his obligations as a real estate agent. On the other hand, in mitigation it is noted that Mr He did admit his wrongdoing at an early stage and provided cooperation during the investigation and the hearing.

[58] We consider Mr He's conduct, whilst not dishonesty, to be at the moderate to higher level of misconduct. We agree with the Committee that whilst not a deliberate or dishonest act of forgery of signatures, the effect of Mr He's actions was essentially the same – by failing to use a blank ASP, the Vendors' and Purchasers' signatures appeared on the backup ASP despite only one of the Purchasers having agreed to and signed it.

[59] This is the third complaint upheld against Mr He, with the fine imposed for the second charge of unsatisfactory conduct being \$8,000. Given the aggravating factor of Mr He's previous disciplinary history, and that this third offence is more serious, we consider a fine of \$10,000 to be appropriate, and censure.

Mr An – Penalty

[60] The Committee submit that the Tribunal found that Mr An's conduct was less serious than Mr He's. This is incorrect. The Tribunal found that they did not consider that "Mr An's actions in inserting the initials into the backup clause were any more serious than Mr He's actions in failing to remove the initials/signatures from the backup ASP".

[61] The Committee submit that Mr An's actions in putting the initials on the backup ASP without confirmation from the Vendors and Purchasers fell well short of the standard expected of a real estate agent. They submit that like Mr He, a primary consideration in setting penalty is deterrence. Overall it submits that Mr An's misconduct is appropriately assessed as being at a moderate level with a slightly lesser fine than Mr He in the region of \$6,000 as well as a censure.

[62] Mr Hodge, as counsel for Mr An, submits that a fine in the region of \$6,000 and a censure would have reflected the correct application of the principles that apply to the imposition of a penalty, were it not for the particular circumstances that apply in Mr An's

case. Mr An's licence has been voluntarily suspended for the last ten months. Mr Hodge submits that previous penalty decisions of the Tribunal confirm that a period of voluntary suspension will serve to reduce the penalty that would otherwise have been ordered.

[63] Mr Hodge submits that a suspension of ten months is a much more restrictive and serious penalty than a fine of \$6,000. Mr An has been out of work for nearly a year and has lost substantial income as a result, far in excess of \$6,000. Mr Hodge submits that it would be unduly punitive, and contrary to the principle of imposing the least restrictive appropriate penalty, to impose a fine against Mr An in circumstances where he has served a lengthy suspension and is suffering financially as a result.

[64] Mr Hodge referred to a letter written by Mr An to the Tribunal dated 19 September 2022 addressing his wrongdoing. He also referred to Mr An's unblemished disciplinary history and references to his good character filed on his behalf.

[65] We agree with Mr Hodge that the Tribunal has previously taken into account a period of voluntary suspension, amongst other factors, when considering penalty.⁷ We consider the gravity of Mr An's conduct as not dissimilar to Mr He. Mr An's actions in copying and pasting the initials on the backup ASP are serious, however, there was no fraud. The vendors lost nothing. Furthermore, Mr An has no previous disciplinary history. However, Mr An did deny his involvement for a very significant amount of time and only admitted to the conduct in December 2021.

[66] Taking all these factors into account, we consider an appropriate penalty to be a fine of \$4,000, and censure.

COSTS

[67] The Committee seeks a contribution towards its costs. It is submitted that a starting point of 50 per cent of the Committee's reasonable costs would be orthodox, with the Tribunal able to make adjustments upwards or downwards depending on the circumstances.

[68] A memorandum filed by the Committee on 17 October 2022 states that the Committee's estimated external legal costs are \$5,678.

⁷ See *Complaints Assessment Committee 403 v Elia* [2017] NZREADT 7 at [25] and *Complaints Assessment Committee 403 v Mansell* [2019] NZREADT 38 at [34].

[69] The Tribunal's discretion to award costs is set out in s 110A of the Act, which lists certain factors to take into account. The High Court has identified the relevant considerations relating to the award of costs in professional disciplinary cases:⁸

1. Professional groups should not be expected to bear all the costs of the disciplinary regime.
2. Members who appeared on charges should make a proper contribution towards costs.
3. Costs are not punitive.
4. The practitioner's means, if known, are to be considered.
5. A practitioner's defence should not be deterred by the risks of a costs order.
6. In a general way, 50 per cent of reasonable costs is a guide to an appropriate costs order subject to a discretion to adjust upwards or downwards.

[70] We accept that the Committee's costs of \$5,678 are reasonable. There is no reason not to award costs. Such an award was, appropriately, not resisted by counsel for Mr He. However, they did submit that the majority of the hearing related to factual matters that were only relevant to the charges against Mr An, and therefore it would be unfair for Mr He to be required to contribute an equal amount as Mr An. They submit that an appropriate costs order should be apportioned on a 70 per cent/30 per cent basis between Mr An and Mr He.

[71] Mr Hodge submits that Mr An should not have to contribute to the Committee's costs and relies on the submissions in relation to Mr An's voluntary suspension and the financial burden already suffered by Mr An. However, Mr An initially denied the charges which has to be taken into consideration.

[72] We see no reason to deviate from the orthodox position of 50 per cent of the Committee's reasonable costs. Nor do we consider that either party deserves a lesser award of costs in the overall circumstances. Accordingly we award costs of \$2,839 to be split equally between Mr He and Mr An.

⁸ *TSM v Professional Conduct Committee* [2015] NZHC 3063 at [21], citing *Vatsyayann v Professional Conduct Committee of New Zealand Medical Council* [2012] NZHC 1138 at [34]. Relied on by the Tribunal in *Complaints Assessment Committee 521 v Wright* [2019] NZREADT 49 at [78] and *Complaints Assessment Committee 1907 v Lindsay* [2021] NZREADT 36 at [77]–[78].

ORDERS

[73] Mr He is:

1. Censured.
2. Ordered to pay a fine of \$10,000 to the Authority within 20 working days of this decision.
3. Ordered to pay costs of \$1,419.50 to the Authority within 20 working days of this decision.

[74] Mr An is:

1. Censured.
2. Ordered to pay a fine of \$4,000 to the Authority within 20 working days of this decision.
3. Ordered to pay costs of \$1,419.50 to the Authority within 20 working days of this decision.

[75] 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.

C A Sandelin
Deputy Chairperson

G J Denley
Member

P N O'Connor
Member