

Decision No: [2011] NZREADT 5

Reference No: READT 067/10

IN THE MATTER OF s 91 of the Real Estate Agents Act 2008

BETWEEN **COMPLAINTS ASSESSMENT
COMMITTEE 10053**

AND **DAVID BEISZER**

Defendant

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

Judge Michael Hobbs – Chairman
Ms J Robson – Member
Mr G Denley – Member

Hearing: 5 April 2011

Appearances: Michael Hodge and Luke Clancy for the Committee
The Defendant in person

Decision: 21 April 2011

ORAL DECISION

[1] The Defendant David Wayne Beiszer faces one charge laid by the Complaints Assessment Committee under s 91 of the Real Estate Agents Act 2008 that the Defendant conducted himself in such a way that his conduct would be regarded by agents of good standing, or reasonable members of the public, as disgraceful under s 73(a) of the Real Estate Agents Act 2008. The particulars of the charge against Mr Beiszer are as follows:-

[2] On 7 June 2010 the Defendant was alleged to have posted an offensive comment on a social networking site (Facebook) about the complainants' client as follows *"hand on heart yes I did watch! Your vendor seems like a cocksucker proper, he didn't have the decency to thank the folks who gave him their home yet he's somehow grown the cahones to front up now he's looking to make 3 or 4 million – nice publicity stunt. A shame Closeup didn't tell Mr Vendor to go fuck himself"*.

[3] At today's hearing the Defendant appeared in person having filed a response to the charge which he admitted and tendered an explanation for his conduct.

[4] Having heard the Defendant today the Tribunal is of the view that the Defendant admitted the particulars of the charge but not the gravamen of it that his conduct was disgraceful under s 73(a).

[5] Mr Hodge for the Committee produced before us affidavits from a number of witnesses, David Soar and Kevin Deane and Stephen Shale, and those witnesses in essence set out the circumstances under which the comments in the Facebook were made by the Defendant.

[6] As we have said it is not disputed by the Defendant that the comments set out in the charge are factually correct and he does not deny that it was he who made the Facebook entry. He has in front of us today tendered an explanation for his behaviour and put briefly he tells us that he didn't ever intend the Facebook entry to be public but assumed that it would be private. Beyond that and explaining some personal pressures that he was under at the time the Defendant offers no further explanation.

[7] For the Committee to succeed in proving on a balance of probabilities the charge laid against the Defendant the Committee must produce evidence to show that the conduct of Mr Beiszer would reasonably be regarded by agents of good standing, or reasonable members of the public, as disgraceful. The manner in which the standard of disgraceful behaviour should be considered by this Tribunal has been the subject of a number of decisions, see *CAC v Dodd*¹ at para 81.

[8] In essence for disgraceful conduct to be proved the Committee must establish that the conduct of the licensee was a serious departure from conduct reasonably regarded by agents of good standing or reasonable members of the public. It needs to be remembered that in this particular case the conduct of the defendant was not in relation to real estate agency work. Under s 73(a) of the Act it is not necessary that the conduct complained of is in relation to real estate agency work as is the case here. However it is necessary for the Committee to establish that there is a sufficient nexus between the alleged conduct of the Defendant and his fitness or propriety to carry out real estate work, see *Smith v the CAC*² at para 19.

[9] The Tribunal has considered the evidence before it and has considered the explanation tendered by the Defendant, which we consider to be only an admission as to the facts.

[10] The Tribunal considers the Defendant's conduct to be both unacceptable and unsatisfactory under s 72(a) and (b) but because the Defendant's conduct was not in relation to real estate agency work we cannot apply s 110(4) of the Act.

¹ [2011] NZ READT 01

² [2010] NZ READT 13

[11] We are however satisfied that the Defendant's conduct does not reach the threshold of disgraceful conduct under s 73(a).

[12] Accordingly for the brief reasons outlined above the charge of disgraceful conduct under s 73(a) is dismissed.

[13] In accordance with s 113 of the Act the Tribunal advises the parties of the right to appeal this decision to the High Court pursuant to s 116 of the Act.

DATED at WELLINGTON this 21st day of April 2011

Judge Michael Hobbs
Chairman

J Robson
Member

G Denley
Member