

**BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

**[2016] NZREADT 63**

**READT 102/14**

IN THE MATTER OF a charge laid under s 91 of the Real Estate Agents Act 2008

BETWEEN COMPLAINTS ASSESSMENT COMMITTEE 20004

AND GURPREET SINGH  
Defendant

Hearing: 29 August 2016 (at Auckland)

Tribunal: Hon P J Andrews, Chairperson  
Ms N Dangen (Member)  
Ms C Sandelin (Member)

Appearances: Ms N Copeland, on behalf of Complaints Assessment Committee 20004  
No appearance by or on behalf of the Defendant

Date of Decision: 8 September 2016

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**DECISION OF THE TRIBUNAL**

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**Charge**

[1] The defendant (Mr Singh) faces a charge of misconduct, laid by Complaints Assessment Committee 20004 (the Committee) on 7 November 2014, under s 73(a) of the Real Estate Agents Act 2008 (the Act). The Committee alleges that Mr Singh has engaged in conduct that would reasonably be regarded by agents of good

standing, or reasonable members of the public, as disgraceful. A response denying the charge was filed by Mr Singh's solicitors on 21 November 2014.

### **The hearing**

[2] Mr Singh originally faced two charges of disgraceful conduct. One charge was withdrawn by leave on 6 August 2015. On 16 May 2016, by consent, the hearing of the remaining charge was set down for hearing on 29-30 August 2016, and timetable directions made as to filing evidence and submissions.

[3] Mr Singh participated in the proceeding, and was represented by solicitors and counsel, until 25 July 2016.<sup>1</sup> On that date his former solicitors advised the Tribunal that they were no longer instructed, and that Mr Singh wished to take no further action in respect of the charge, would not be filing evidence, and would not be attending the hearing. In the light of the advice from Mr Singh's solicitors, a telephone conference was scheduled for 12 August 2016.

[4] Mr Singh was advised of the telephone conference, but did not respond to emails (being the only means the Tribunal had for contacting him) and did not attend the telephone conference. In a Minute dated 12 August 2016, the Chairperson ruled that the hearing on 29 August 2016 would proceed as a formal proof hearing. A copy of the Minute was emailed to Mr Singh.

[5] Briefs of Evidence of the witnesses for the Committee were filed on 22 April 2015, and in late June 2016. The Committee's Bundle of Documents was filed on 27 June 2016. Copies of the briefs of evidence and the Bundle of Documents were provided to Mr Singh. Opening submissions on behalf of the Committee were filed on 24 August 2016, and provided to Mr Singh. Mr Singh did not provide any evidence or submissions. He did not appear when the proceeding was called.

[6] The Tribunal is satisfied that Mr Singh was aware of the hearing, and that all relevant documents have been provided to him. His decision not to participate in the

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<sup>1</sup> Mr Singh's participation included, on 27 August 2015, applying to strike out one of the charges. That application was dismissed by the Tribunal in a decision dated 14 December 2015.

proceeding was clearly communicated to the Tribunal. It is appropriate for the hearing to proceed by way of formal proof.<sup>2</sup>

### **Factual background**

[7] The summary set out below is in large part derived from the evidence given by the complainant, Ms O.

[8] At the time of the alleged offending, Mr Singh was a licensed agent recently employed by Sue Douglas Property Services Ltd, trading as Ray White Manurewa (“Ray White”). Up until 1 March 2013 he was employed by BCRE Ltd, trading as Harcourts BCRE Manurewa (“Harcourts”). Mr Singh worked at the Harcourts office on 4 and 5 March 2013 finalising some matters.

[9] At about 5.10 pm on 5 March 2013 Ms O drove into the McDonalds carpark in Manurewa. Her two daughters were with her. She placed an order at the drive-through, and was told it would take some time to complete the order. She therefore parked in the carpark. It was some 20 to 25 minutes before the order was ready.

[10] As Ms O parked, she noticed a man outside a car talking on a cellphone. Ms O was certain that the man was the person later identified as Mr Singh. Mr Singh approached Ms O, and spoke to her through the open driver’s window. She had never before met, or known of, Mr Singh. Mr Singh asked questions about her car, then talked to her about his wife. He asked the names of her daughters, and told her the name of his wife and daughter. He showed her photographs of his daughter. He commented that her younger daughter’s name was similar to that of his daughter. Mr Singh was talking to Ms O for all of the time it took for the order to be completed.

[11] Ms O’s older daughter went to check on the order. As she was returning to the car Mr Singh handed Ms O a copy of his Harcourts business card and said to her “If you want casual sex, no strings attached, here is my card”. There was a photograph of Mr Singh on the card, together with the Harcourts office telephone and fax numbers, his cellphone number, and the Harcourts web address. Ms O described Mr

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<sup>2</sup> See *CAC v Towers* [2016] NZREADT 24, at [10]-[12].

Singh's statement as "coming right out of the blue". Ms O's younger daughter heard what Mr Singh said.

[12] In Ms O's words, she was dumbfounded by what Mr Singh had said. She was outraged and disgusted that Mr Singh should speak to her as he did, particularly in front of a child. She drove away, retaining the business card, but saying to Mr Singh that she would not contact him. After discussing the matter with her mother and a boarder at her house, Ms O decided to contact Harcourts to complain about Mr Singh. Before that, she decided to contact Mr Singh's wife to let her know what her husband was doing. As the only telephone number she had for Mr Singh was his cellphone, she rang that. Mr Singh answered and made an excuse as to why she could not talk to his wife. Ms O then hung up, not realising that her own telephone number would have shown up on his cellphone.

[13] Mr Singh called Ms O back twice, claiming to be a Telecom representative. She recognised his voice, and hung up each time.

[14] On 9 March Ms O contacted the Harcourts office to make a complaint about Mr Singh. She spoke to Mr Hewes, and he advised her that she could make a complaint to the Real Estate Agents Authority ("the Authority"). Ms O subsequently met with Mr Hewes, and he completed a Complaint Form for her. This was emailed to the Real Estate Agents Authority on 11 March 2013. At the same time the Principal Officer of Harcourts, Mr Viall, made a complaint about Mr Singh.

### **Mr Singh's response to the complaint**

[15] As recorded earlier, Mr Singh denied Ms O's allegations. In his response form, and in an interview with the Authority's investigator, he denied having been at the McDonald's carpark on 5 March 2013 at the time Ms O said she was there, and said he had been at a recruitment seminar at the Ray White office between 4.30 and 6.00 pm on that day. He told the investigator that he had witnesses to his being at the seminar. Mr Singh asserted to the investigator that Ms O's complaint was part of a "set up", designed to ruin his career. He commented on the fact that the alleged conduct was on the same day he left Harcourts.

[16] However, Mr Singh filed no evidence before the hearing before the Tribunal. The Ray White manager, Ms Douglas, said in a letter to the Authority that Mr Singh had been at the seminar. However, Ms Douglas did not give evidence, and the Tribunal has not had the benefit of hearing evidence from Mr Singh, Ms Douglas, or anyone else on his behalf.

[17] We record at this point that Mr Singh voluntarily suspended his licence on 15 May 2015.

### **Disgraceful conduct**

[18] Section 73(a) of the Act provides:

#### **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 ...

[19] In considering the charge against Mr Singh, the Tribunal has referred to the Tribunal's discussion of disgraceful conduct in *Complaints Assessment Committee (CAC 10024) v Downtown Apartments Ltd* in which the Tribunal said, in relation to a charge of disgraceful conduct:<sup>3</sup>

[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.

[59] So, in summary, the Tribunal must find on the 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.

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<sup>3</sup> *Complaints Assessment Committee (CAC 10024) v Downtown Apartments Ltd* [2010] NZREADT 6, at [59].

[20] The Tribunal's statements in *Downtown Apartments* must now be considered by reference to the judgment of Woodhouse J in *Morton-Jones v Real Estate Agents Authority*, delivered on 8 August 2016, in particular, his Honour's discussion of s 73(a) of the Act.<sup>4</sup> His Honour said, in relation to the above passage from *Downtown Apartments*:<sup>5</sup>

[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 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 work.

[21] Ms Copeland acknowledged that Mr Singh's conduct would not be regarded as real estate agency work. However, she submitted that under s 73(a) the Tribunal may make a finding of disgraceful conduct, by reference to reasonable members of the public as well as by reference to the standards of agents of good standing, where the conduct has the capacity to bring the industry into disrepute. That submission is supported by Woodhouse J's statement in *Morton-Jones* that:<sup>6</sup>

"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).

[22] In the present case, the Tribunal's enquiry must therefore be: would Mr Singh's conduct reasonably be regarded by agents of good standing (considering the standards that an agent of good standing should aspire to, including any special knowledge, skill, training or experience such person may have), or reasonable members of the public, as disgraceful?

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<sup>4</sup> *Morton-Jones v Real Estate Agents Authority* [2016] NZHC 1804.

<sup>5</sup> At [29].

<sup>6</sup> At [30].

[23] The standard of proof required before the Tribunal can find a charge under s 73(a) proved is the balance of probabilities.<sup>7</sup> Thus, the Tribunal must find that the Committee has proved that it is more likely than not that the licensee has engaged in conduct that would reasonably be regarded by reasonable members of the public, or agents of good standing, as disgraceful.

[24] The Tribunal must first determine whether to accept Ms O's evidence as to the events of 5 March 2013. If the Tribunal accepts Ms O's evidence, there are then three aspects of Mr Singh's conduct to be considered in the course of determining whether he engaged in disgraceful conduct:

- [a] Mr Singh's conduct towards Ms O;
- [b] Mr Singh's conduct in relation to Harcourts; and
- [c] Mr Singh's response to the complaint.

### **The evidence**

#### *Ms O*

[25] We accept Ms Copeland's submission that Ms O's evidence establishes on the balance of probabilities that:

- [a] The person who approached Ms O at the McDonalds carpark was Mr Singh;
- [b] Mr Singh gave Ms O his Harcourts business card, which had his name, photograph and contact details (including Harcourts details) on it;
- [c] Mr Singh said to Ms O the words set out in her complaint;

[26] In accepting Ms O's evidence, we reject Mr Singh's assertion that he was not at the McDonald's carpark, but was at a seminar at the Ray White office for the

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<sup>7</sup> Real Estate Agents Act 2008, s 110(1).

entire period. While we accept that a seminar was held that afternoon, we also accept Ms Copeland's submission that there is doubt as to the time the seminar ended, such that we can accept that there was sufficient time for Mr Singh to make the (very short) journey to the McDonalds carpark after the seminar ended.

[27] Mr Singh's conduct towards Ms O was clearly inappropriate and offensive. As noted earlier, she was disgusted that he would approach her and proposition her, particularly in front of a child.

#### *Harcourts*

[28] Harcourts' complaint was that Mr Singh approached a member of the public and offered her casual sex, and gave her a Harcourts business card when his employment had ended some five days earlier. The complaint stated that Mr Singh had brought Harcourts into disrepute.

[29] We have accepted Ms O's evidence that Mr Singh approached her and offered her casual sex, and that the business card Mr Singh gave her was a Harcourts card, with Harcourts' business details.

#### **Our assessment**

##### *The complaints by Ms O and Harcourts*

[30] Rule 6.3 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 (the Rules) provides that "a licensee must not engage in any conduct likely to bring the industry into disrepute". In respect of both complaints, Mr Singh failed to comply with r 6.3. His conduct towards Ms O brought the real estate industry into disrepute, and his use of his Harcourts business card served to bring that Agency, in particular, into disrepute.

##### *Mr Singh's response to the complaints*

[31] Ms Copeland submitted that as there is no evidence before the Tribunal by or on behalf of Mr Singh, the Tribunal has no evidence on which to determine whether

the matters set out in his response to the charges are a reasonable possibility. She further submitted that Mr Singh intentionally withdrew from this proceeding so that his account could not be tested before the Tribunal.

[32] It is not necessary for the Tribunal to determine whether this was Mr Singh's particular intention when he made the decision not to participate in the proceeding – indeed we are not in a position to make such a determination. However, there is no evidence from Mr Singh, because he has chosen not to provide any, and he has chosen not to appear before the Tribunal.

[33] Mr Singh's assertion (in his response to Ms O's complaint) that he was elsewhere at the time he was alleged to have been in the McDonalds carpark must be dismissed. He cannot pursue that assertion when he has, since 25 July 2016, failed to engage in the disciplinary process; he has failed to file briefs of evidence or make himself available for cross-examination.

[34] Mr Singh also asserted that Ms O's and Harcourts' complaints were a "set up", designed to ruin his career. If the Tribunal were to accept that assertion, it would be necessary to find that Ms O was lying, or mistaken. Mr Singh has provided no evidence, or submission, as to why Ms O would have any reason or interest in participating in any "set up", or that she in fact did so. His assertion cannot be accepted.

[35] Mr Singh cannot simply rely on saying that the charge against him has not been proved to the required standard. This is not a criminal proceeding. As said in relation to a disciplinary charge against a solicitor in *Re C (A Solicitor)*, a practitioner facing a disciplinary charge "must be prepared to answer the charge against him".<sup>8</sup> In *Orlov v NZ Lawyers and Conveyancers Disciplinary Tribunal* a Full Court of the High Court distinguished disciplinary proceedings from criminal proceedings and said:<sup>9</sup>

Obviously a practitioner cannot be made to co-operate, but consequences properly flow if the practitioner does not. ...

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<sup>8</sup> *Re C (A Solicitor)* [1963] NZLR 259 (SC) at 259.

<sup>9</sup> *Orlov v NZ Lawyers and Conveyancers Disciplinary Tribunal* [2014] NZHC 1987; [2015] 2 NZLR 606, at [65].

and later:<sup>10</sup>

The obligation is on the practitioner to assist. ...

**Would Mr Singh’s conduct reasonably be regarded as disgraceful?**

[36] Mr Singh approached Ms O, a woman who did not know him, and propositioned her to engage in “casual sex, no strings attached”. He did this in front of Ms O’s young daughter. His conduct was clearly inappropriate, and offensive both objectively and to Ms O personally. In the course of that conduct, Mr Singh presented his Harcourts business card. In both of these respects, Mr Singh was in breach of r 6.3, bringing the industry and Harcourts into disrepute.

[37] Further, Mr Singh failed to engage in the disciplinary process, by failing to present evidence and to appear at the hearing. In this he was in breach of his professional obligation to assist the Tribunal in its determination of the charge against him.

[38] Ms Copeland made submissions as to penalty, for consideration in the event that the Tribunal found the charge proved. She acknowledged that Mr Singh’s conduct was not at the most egregious level of disgraceful conduct, but submitted that his failure to engage in the disciplinary process was an aggravating factor to be considered. She submitted that, notwithstanding Mr Singh’s voluntary suspension, the appropriate penalty would have been a period of suspension of between six and twelve months. She further submitted that it is important that the public register records an order for suspension of a licensee, so that should the licensee seek to reactivate the licence, the licensee would not be able to do so for the period of suspension.

[39] In this case, considering each of the aspects of Mr Singh’s conduct in isolation and in combination, the Tribunal is not satisfied that it has been proved on the balance of probabilities that his conduct would reasonably be regarded by agents of good standing, or reasonable members of the public, as disgraceful. The charge of misconduct under s 73(a) is not proved.

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<sup>10</sup> At [67].

[40] Although Mr Singh's conduct has not been found to be "disgraceful", the Tribunal would have found, if it had the jurisdiction to do so, that Mr Singh's conduct was "unsatisfactory" under s 72 of the Act. The Tribunal cannot make such a finding, as his conduct did not relate to real estate agency work.<sup>11</sup> However, while noting the limit to the Tribunal's jurisdiction, the Tribunal suggests that, should Mr Singh seek to reactivate his licence, he undergo an appropriate educational course explaining the principles of ethics relating to real estate practice

### **Outcome**

[41] The charge of misconduct under s 73(a) (disgraceful conduct) must be dismissed.

[42] The Tribunal draws the parties' attention to s 116 of the Real Estate Agents Act 2008.

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Hon P J Andrews  
Chairperson

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Ms N Dangen  
Member

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Ms C Sandelin  
Member

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<sup>11</sup> See Real Estate Agents Act 2008, s 110(4).