

**BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

**[2017] NZREADT 41**      **READT 026/16**

UNDER                                      THE REAL ESTATE AGENTS ACT 2008

IN THE MATTER OF                    AN APPEAL UNDER SECTION 111 OF  
THE ACT

BETWEEN                                    RODNEY GRIFFITHS  
Appellant

AND     THE REAL ESTATE AGENTS AUTHORITY  
(CAC 412)  
First respondent

AND     JOHN BURNETT  
Second respondent

Hearing:                                    On the papers

Tribunal:                                    Ms K Davenport QC – Chairperson  
Mr J Gaukrodger – Member  
Mr G Denley – Member

Appearances:                              Appellant in person  
Mr Mortimer for the first respondent  
Second respondent in person

Decision:                                    23 June 2017

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**PENALTY DECISION OF THE TRIBUNAL**

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[1] In its decision dated 12 April 2017 the Tribunal found Mr Burnett guilty of unsatisfactory conduct in relation to his handling of the sale of Mr Griffiths' business.

[2] In its decision the Tribunal invited submissions on the appropriate penalty and asked the parties to include submissions on educational courses and other practical steps that could be taken to address the concerns raised by the Tribunal in its decision.

[3] Mr Burnett has filed his submissions by email. He points to the fact that he has attended REINZ Business Brokers conferences in August 2016 and February 2017, and that he has now adopted a number of measures aimed at resolving the matters identified by the Tribunal in its decision. This includes referring all advertising to the vendor before placing an advertisement, ensuring that if fixed asset schedules are not accurate there is a clause in the agreement in the sale and purchase recording this and updating the website. He says he has apologised to Mr Griffiths, and he submits that he should have mentoring undertaken by a Mr Heron JP, who has been an experienced agent, but is no longer working as an agent. He agrees also that he will undertake identifiable training through the REAA.

[4] Mr Burnett agrees that he could pay a small fine but submits he should not be censured. However, he agrees that a reprimand could be a possible alternative. Finally he submits he *“would suggest that the offending was at the very low end of the scale of seriousness”*.

[5] The Real Estate Agents Authority agreed that Mr Heron could fulfil a mentoring role as it was difficult to find mentors. They suggest that if the Tribunal directed this supervision an order could be made under s.93(1)(h) for the second respondent to take advice in relation to management of his business from Mr Heron. The CAC submitted that the Tribunal could also specify a time period for the order, and that Mr Burnett needs to have a set number of meetings at least once a month with Mr Heron. The CAC submitted that a written record should be kept as to sessions and the topics discussed. The REAA suggested also that the Tribunal might need to ensure access for the Authority to inspect the records of the mentoring by making an order under s.93(1)(h).

[6] Finally, the REAA submitted that as Mr Heron does not have a practising certificate, the obligation is on Mr Burnett to notify the REAA if Mr Heron was not able to fulfil his duties.

[7] Mr Griffiths' submissions were directed at his concern that Mr Burnett was unable to follow instructions. He submitted that if this was not deliberate there was an issue around Mr Burnett's consistent lack of retention about instructions. He agreed with the REAA that Mr Burnett would benefit from some form of support. He set out in some more detail the areas of concern that he had experienced and why

he considered that it was Mr Burnett's memory which was/is a concern. Mr Griffiths also seeks a refund of his commission.

[8] On this point, the Tribunal understands that there is or was a commission dispute between Mr Burnett and Mr Griffiths and do not consider that it has enough information on which to make an order with respect to the commission that Mr Griffiths has been asked to pay.

### **Other Discussion**

[9] The Tribunal has decided to make orders directing the supervision/mentoring of Mr Burnett by Mr Max Heron under s. 93(1)(h). Mr Heron's role will be to meet with Mr Burnett twice a month when Mr Burnett has active listings, and once a month when he does not. Mr Burnett will be required to report to the Real Estate Agents Authority on a monthly basis as to the supervision undertaken by Mr Heron and his current listings, and keep a log book of the meetings, topics discussed and actions to be taken.

[10] In addition, Mr Heron and Mr Burnett should discuss any current issues in the businesses that Mr Burnett has for sale and, with the consent of the vendors, Mr Burnett should allow Mr Heron to review his documentation concerning the sale and discuss with him any issues arising out of the sale process. In particular, steps should be taken to ensure accuracy in documents. Finally, Mr Heron and Mr Burnett will draft an action plan for each specific agreement and record this in the log books. This should address any questions of memory lapse by Mr Burnett.

[11] The supervision will continue for a period of two years.

[12] Mr Burnett will pay the costs of Mr Heron's time in undertaking the supervision. If Mr Heron has any concerns, then he may of course write directly to the Real Estate Agents Authority. As part of the order that the Tribunal will make is if Mr Heron indicates any concerns about any aspects of Mr Burnett's compliance then Mr Burnett must report those immediately to the Real Estate Agents Authority.

[13] These orders will ensure that Mr Burnett has adequate supervision without unduly burdening him when he doesn't have any ongoing sales given that he only

has 2-3 sales a year. It ought to also ensure that if issues arise, there is a mechanism for these to be reported back to the Authority for further investigation.

[14] It is appropriate too, that Mr Burnett pay a fine for the cost of the industry's time and energy in bringing this prosecution against him. The Tribunal fine Mr Burnett \$500.

[15] It is also appropriate that Mr Burnett be censured and/or reprimanded.

[16] The Tribunal do not consider that the Act intended to draw a distinction between the two terms. It, however, has not been fully argued before the Tribunal.

[17] Accordingly, the Tribunal orders, pursuant to S.93(1)(h) that Mr Burnett is:

- (a) To take advice in relation to management of his business from Mr Max Heron of Auckland, JP.
- (b) To meet with Mr Heron monthly for a period of 24 months, or bi-monthly for 24 months (when Mr Burnett has an ongoing sale). Mr Burnett shall keep a log book of the meetings, topics discussed and action plan agreed.
- (c) Mr Heron shall agree a plan for the management of each sale with Mr Burnett and shall draw up a checklist with Mr Burnett's assistance to ensure that the sale proceeds smoothly. This plan is also to be recorded in the log book.
- (d) Mr Burnett will be responsible for the cost of the supervision and for obtaining the vendor's consent to any disclosures which need to be made to Mr Heron.
- (e) Mr Heron may write directly to the Real Estate Agents Authority if he has any concerns about any aspect of compliance by Mr Burnett.
- (f) Mr Burnett is also required to report to the Real Estate Agents Authority if Mr Heron expresses concerns to him in writing about his practice.
- (g) Further, pursuant to s. 93(1)(h), Mr Burnett is to make his records of the mentoring log books and the plan as set out above, available for

inspection by the Real Estate Agents Authority, or its specified officer, as and when requested by the Real Estate Agents Authority for the two year period of the management advice.

(h) Mr Burnett is fined the sum of \$500.

(i) Mr Burnett is censured.

[18] The Tribunal draws the parties attention to the appeal provisions of s. 116 Real Estate Agents Act.

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Ms K Davenport QC  
Chairperson

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J Gaukrodger  
Member

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G Denley  
Member