

**BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

**[2017] NZREADT 74**

**READT 038/12**

IN THE MATTER OF

Charges under s 91 of the Real Estate  
Agents Act 2008

BROUGHT BY

COMPLAINTS ASSESSMENT  
COMMITTEE (CAC 10057)

AGAINST

PROPERTY BANK REALTY LIMITED  
Defendant

On the papers

Tribunal:

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

Date of Ruling:

5 December 2017

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**RULING OF THE TRIBUNAL**  
**(Application to withdraw charges)**

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## Introduction

[1] On 20 June 2012, Complaints Assessment Committee 10057 (“the Committee”) charged Property Bank Realty Limited (“the defendant”) with misconduct under s 73(a) of the Act (disgraceful conduct) (“the charge”). Mr Dermot Nottingham was at the material time engaged by the defendant. A response to the charge was filed on behalf of the defendant on 25 June 2012. Submissions for the Committee and an evidential bundle of documents were filed on 26 May 2015, but a hearing has not been held.

[2] Mr Nottingham has consistently submitted that the hearing of the charge cannot proceed until other proceedings before the Tribunal are completed. Those other proceedings are appeals by the defendant, Mr Nottingham, Mr Phillip Nottingham, and Mr Robert McKinney against a decision of the Committee dated 18 July 2012 (“the appeal proceedings”). In a decision issued on 13 October 2014, the Tribunal dismissed their appeals. Pursuant to judgments of the High Court and the Court of Appeal, the appeal proceedings have been remitted back to the Tribunal for re-hearing, to reconsider the evidence of one witness, and to hear the evidence of two further persons.<sup>1</sup>

[3] The re-hearing was scheduled to begin on 4 December 2017. However, the re-hearing has been adjourned, pending determination of the appellants’ appeal to the High Court against a pre-trial ruling issued by the Tribunal on 11 October 2017.

[4] In a memorandum dated 23 November 2017, counsel for the Committee sought leave to withdraw the charge against the defendant. The reasons given for this application are:

[a] The defendant is no longer engaged in real estate agency work, and has not been for some time.

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<sup>1</sup> *Nottingham v Real Estate Agents Authority* [2015] NZHC 1998; *Nottingham v Real Estate Agents Authority* [2017] NZCA 1.

- [b] A number of the particulars in the charge concern conduct by Mr Dermot Nottingham who has not held a licence to carry out real estate agency work for some years. It is submitted that in the event that Mr Nottingham attempts to recommence practice in the future, the relevant matters contained in the charge could be addressed at that time.
- [c] The defendant has consistently submitted that the appeal proceedings must be finally disposed of before the hearing of the charge can advance.
- [d] Progress towards the charges being heard has been subject to lengthy delays. It is over five years since the charge was laid, and the appeal proceedings are now further delayed by the appellants' current appeal to the High Court.
- [e] The Committee exercises a prosecutorial discretion as to whether to bring a charge, and as to whether continue with the prosecution of a charge, taking into account a wide range of public interest factors. The discretion is not limited to evidential and threshold questions.

[5] Counsel for the Committee records that the application for leave to withdraw the charge is on the basis that:

- [a] it does not represent any concession that the charge was not validly brought;
- [b] withdrawal of the charge does not itself prevent the Committee from laying the charge again in the future, or operate to prevent the Committee, any other Complaints Assessment Committee, the Real Estate Agents Authority, or any other person, from relying on the matters contained in the particulars of the charge as part, or arising from, any proceeding involving Property Bank Realtor Ltd, Mr Dermot Nottingham, Mr Philip Nottingham, Mr Robert McKinney, and Mr Donald McPherson, or any involved or associated with any of them; and

[c] withdrawal of the charge represents an exercise of the Committee's prosecutorial discretion, taking into account a wider range of factors in the circumstances of this case.

[6] Mr Nottingham has been given the opportunity to file submissions in relation to the Committee's application, but has not done so.

### **Ruling**

[7] The Tribunal accepts the reasons given by the Committee for withdrawing the charges, and notes the basis on which the application has been made.

[8] Leave is granted to the Committee to withdraw the charges.

[9] Pursuant to s 113 of the Real Estate Agents Act 2008, the Tribunal draws the parties' attention to s 116 of the Real Estate Agents Act 2008, which sets out appeal rights. Any appeal must be filed in the High Court within 20 working days of the date on which the Tribunal's decision is served. The procedure to be followed is set out in part 20 of the High Court Rules.

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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