

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2019] NZREADT 27

READT 008/19

IN THE MATTER OF

An Application for Review of a Registrar's
decision, under Section 112 of the Real
Estate Agents Act 2008

BETWEEN

HAYDEN GEORGE JONES
Applicant

AND

THE REGISTRAR OF THE REAL
ESTATE AGENTS AUTHORITY
Respondent

Hearing:

13 June 2019, at Christchurch

Tribunal:

Hon P J Andrews (Chairperson)
Ms C Sandelin (Member)
Mr N O'Connor (Member)

Appearances:

Mr J Eaton QC, on behalf of the Applicant
Mrs P Appleton, on behalf of the Registrar

Date of Decision:

28 June 2019

DECISION OF THE TRIBUNAL

Introduction

[1] Mr Jones has applied under s 112 of the Real Estate Agents Act 2008 for review of the Registrar's decision dated 1 April 2019, to decline his application to renew his Individual Agent's licence.

Background

[2] Mr Jones has held an individual agent's licence since 15 February 2008.

[3] On 5 March 2019, he applied to renew his agent's licence, which was due to expire on 31 March 2019. At that time he was engaged at Ray White Next Step Realty Limited, trading as Ray White Cashmere ("the Agency"). In his application for renewal, he made the following statement under the heading "Circumstances changed":

An issue has arisen following my guilty plea and conviction on 7 representative charges under Section 143A of the Tax Administration Act 1994. I will post submissions and supporting documentation to the [Real Estate Agents Authority] tomorrow.

[4] Under cover of a letter from his counsel, Mr Eaton QC, dated 5 March 2019, Mr Jones submitted the following to the Registrar:

[a] An affidavit sworn on 5 March 2019, in which he stated that he was currently serving a sentence of six months' home detention following his plea of guilty to seven representative charges of tax offending. He included copies of the prosecution's summary of facts, his counsel's sentencing submissions, and the District Court Judge's sentencing notes.

[b] Submissions by Mr Eaton in support of Mr Jones' application.

[c] An affidavit sworn by Mr Jones' father.

[d] Testimonials and references.

[5] Each of the seven charges alleged that Mr Jones had aided and abetted another person (in each case, a company of which he was a director) to knowingly apply a deduction of tax for a purpose other than payment to the Commissioner of Inland Revenue. The deductions not paid to Inland Revenue totalled \$402,441.24, and included PAYE, Kiwisaver employer and employee deductions, child support employer deductions, student loan employer deductions, and superannuation cash contributions. The offences were committed between 2010 and 2014.

[6] Mr Eaton submitted to the Registrar that Mr Jones had entered guilty pleas to the charges on the basis that he became aware that the various companies were not meeting their tax obligations, and then did not act to ensure that they did so. He submitted that Mr Jones' father made the decisions not to pay the deductions to Inland Revenue. This was confirmed by Mr Jones Snr in his affidavit.

[7] Mr Eaton further submitted to the Registrar that the offending had occurred in the aftermath of the Christchurch earthquakes. Each of the seven companies was involved in the hospitality industry, which had suffered significantly after the earthquakes. He submitted that Inland Revenue was aware of the circumstances with the companies and had made a commercial decision to allow time for the businesses to be sold, with a view to all obligations being met. However, an agreed sale did not eventuate, as the purchaser defaulted.

[8] Mr Eaton further noted that it was not alleged that any of the money not paid to Inland Revenue was used for any purpose other than to ensure that the businesses survived pending sale, and that Mr Jones had paid a significant sum to Inland Revenue, which was accepted in full and final settlement of his personal obligation. (We note that the District Court Judge had ordered Mr Jones to pay reparation of \$205,000.)

[9] In a letter dated 1 April 2019, the Registrar advised Mr Jones:

Application for renewal of Agents licence – a decision to decline

Your application for renewal of an Individual Agents licence is being declined by the registrar under section 52(2) of the Real Estate Agents Act 2008.

Reason

Your application for renewal of your Individual Agent's licence is being declined on the basis that you have been convicted of seven representative

charges relating to tax evasion, Applies/Permits Deduction/Withholding Tax and because of this conviction, you are not fit and proper to hold a licence. Section 36(1)(c) of the Act states that:

An individual may be licensed as an agent or branch manager if the individual satisfies the Registrar that he or she is a fit and proper person to hold a licence

...

The Registrar then advised Mr Jones of his right to seek a review of his decision pursuant to s 112 of the Act.

[10] In a letter dated 8 April 2019, Mr Eaton advised the Registrar that Mr Jones intended to “appeal” against the Registrar’s refusal to renew his licence. He stated that there had been a “misunderstanding” as to the charges against Mr Jones, and he had not been charged with tax evasion. He asked that Mr Jones be given a form of provisional licence to enable him to carry out professional obligations to existing clients pending determination of the “appeal”. The Registrar responded by letter dated 15 April 2019, advising that he remained of the view that Mr Jones was not entitled to hold a licence. The Registrar said:

... he is not satisfied that Mr Jones’ licence can be renewed given Mr Jones’ very recent convictions and sentence of six months home detention in relation to tax offences. The Registrar is not satisfied that Mr Jones is a fit and proper person to hold a licence.

Further evidence

[11] An affidavit sworn by Mr Jones on 24 May 2019 was filed with Mr Eaton’s written submissions. Among other things, Mr Jones stated that Inland Revenue had charged his father with tax offences, and that his father’s affidavit, in which he stated that he was the only individual responsible for the companies’ failure to make payments to Inland Revenue, was being utilised for the prosecution.

[12] Mr Jones also gave evidence and was cross-examined at the review hearing. He said that his father had pleaded guilty to the charges, and was to be sentenced on 20 June 2019. He said that prior to 2014, he was engaged as a mentor and adviser in a real estate agency, but not actively selling real estate, and was involved in his father’s businesses. In 2014, he disengaged himself from his father’s businesses and joined

the Ray White group. He said that since then, he was “100 percent” engaged in real estate agency work.

[13] Mr Jones said that he was charged under the Tax Administration Act in June 2017. He entered his guilty pleas on 4 June 2018. At that time he advised his manager (Mr Rogers) and, by agreement, was “stood down” from the Agency. He accepted that he had not advised the Registrar of the charges when he was charged. He said that he thought that as he had not been convicted, and had entered pleas of not guilty, the presumption of innocence applied.

[14] Mr Jones also accepted that he did not advise the Registrar when he was convicted. He said he understood that Mr Rogers would do so and he believed that, and the fact that he had ceased real estate agency work, would cover things until the time came for him to renew his licence. He stated that he had not been engaged in any real estate agency work since his guilty pleas in June 2018.

[15] Mr Eaton provided the Tribunal with copies of media articles published on 28 June 2018 (following Mr Jones’ guilty pleas) and 24 September 2018 (following his sentencing). He advised that name suppression had not been sought after the guilty pleas were entered.

[16] A “Brief of Evidence” of the Registrar, Mr Doherty, dated 31 May 2019, was also filed. He set out the course of his consideration of Mr Jones’ application for renewal of his licence as follows:

3.3 On 8 March 2019 my licensing team received an application for licence renewal from Hayden George Jones. Mr Jones’ application form notified my team that he had a change of circumstances. Mr Jones’ change in circumstances was that he had convictions and had very recently served a sentence of six months’ home detention. Mr Jones’ convictions were of serious concern for me as convictions can be a strong indicator of an applicant’s fitness to hold a licence.

3.4 In considering Mr Jones’ application I carefully considered the material included in support of his application. This information included the fact that his convictions were relating to breaches of the Tax Administration Act 1994 (TA), testimonials and references, sentencing notes, and that he had recently served a sentence of home detention.

3.5 The nature of Mr Jones’ offending and convictions and the timing of his notification of his offending were very important to my assessment. I considered that tax offences were of a similar type to the convictions that our

Act prohibits a person from being licensed, under section 37. That is, for over three years, Mr Jones knowingly chose not to take steps to ensure that he met his obligations under the TA. In addition to this, his renewal application was the first time Mr Jones had notified the Authority that he had been convicted and so had had a change in circumstances.

3.6 Mr Jones is a licensee and has held a licence for more than 10 years. In my view he should have known that he should let the Authority know of the convictions and sentence well before his renewal application in March 2019. As the Registrar, I rely on the integrity of licensees to advise the Authority of a change of circumstances, particularly where the change is material and can impact on the public confidence and the reputation of the industry. Professionalism and disclosing information are key expectations of licensees.

3.7 After taking into account all the relevant information from Mr Jones, his specific facts, and the purpose of our licensing regime and Act, I was not satisfied that he was fit and proper to hold a licence.

...

[17] Mr Doherty also stated that it had come to his attention, after his decision to decline Mr Jones' application, that a previous application by Mr Jones to renew his agent's licence had called into question whether he was a fit and proper person to hold a licence. Mr Jones had been convicted (together with his father) on charges under the Financial Reporting Act 1993, that they failed to file financial statements and audit reports for two "issuer" companies, for the years ended 31 March 2012 and 2013. On 11 September 2014, Mr Jones was fined \$35,000.

[18] On that occasion, the (then) Registrar advised Mr Jones by letter dated 16 March 2015 that she was required to be satisfied, amongst other things, that Mr Jones was, by reason of his personal character and financial position, a fit and proper person to be an officer of a licensee company. She invited Mr Jones to make submissions as to that issue. Having received submissions and supporting character references from Mr Jones, the Registrar granted a renewal of his agent's licence. Mr Doherty considered that this additional information confirmed the correctness of his decision that Mr Jones was not a fit and proper person to hold an agent's licence.

[19] In answers in cross-examination, Mr Doherty said that the decision to decline to renew Mr Jones' licence was based on the convictions. He said that the fact that Mr Jones had not informed him of the convictions earlier was important to him, but on its own, would not have led to a decision to decline renewal.

[20] Mr Doherty accepted that his reference to “tax evasion” in his letter of 1 April 2019 was wrong, and an error on his part. He said that he used the term “tax-related offences” in his letter of 15 April. He accepted that he had not contacted Mr Jones or any of the authors of the character references, and that he had not made any enquiries of Mr Jones Snr. Mr Doherty also accepted that there were mitigating factors arising from the fact that Mr Jones Snr controlled the companies concerned.

[21] Mr Doherty also accepted that Mr Jones’ offending occurred in the aftermath of the Christchurch earthquakes, and that there was no “personality trait” of concern in Mr Jones’ case. He said that, for him, the “public confidence” issue was most important. He did not consider that there had been sufficient time between Mr Jones’ sentencing and his application for renewal. He did not accept that it was more appropriate to ask how long had elapsed since the offending itself. He said that on the issue of public confidence, the sentencing date is more relevant than the date of the conduct; the important factor was when the conduct became public knowledge.

[22] Mr Doherty said he was not aware of any media publicity of the convictions, and the Authority had not received any notifications of concern regarding Mr Jones from members of the public or other licensees. He was not aware of any advice from the Agency that Mr Jones had ceased doing real estate agency work following his convictions.¹

Relevant legal principles

[23] We summarise the relevant legal principles as follows:²

- [a] The onus is on the applicant to satisfy the Tribunal that he or she is a fit and proper person to hold a licence. The onus may be lighter on a new entrant to the industry than that on a person who has erred in a professional sense following admission to the industry.

¹ Mr Doherty made enquiries as to this during the review hearing.

² See *Revill v Registrar of the Real Estate Agents Authority* [2011] NZREADT 41 and *Re M* (note) [2005] NZLR 544, at [21]–[23].

- [b] The factors relevant to assessment of whether an applicant is a fit and proper person to hold a salesperson's licence are:
 - [i] The focus is necessarily forward-looking. The function of the Registrar, and the Tribunal on review, is not to punish an applicant for past conduct, but to assess the applicant's worthiness and reliability for the future.
 - [ii] The Registrar (and the Tribunal) must look at the facts of the case "in the round", and not just have regard to the fact of a "previous conviction or convictions".
- [c] Pursuant to s 112 (4) and (5) of the Act, after conducting the review, the Tribunal may confirm, reverse, or modify the decision of the Registrar. If it reverses or modifies the Registrar's decision, it may exercise any of the powers the Registrar could have exercised.

[24] In *Revill v The Registrar of the Real Estate Agents Authority*, the Tribunal was considering the fitness to hold a licence of an applicant who had 25 convictions dating from 1969 to 2002, including convictions for sexual offences, possession and cultivation of cannabis, violence and firearms offences, and driving offences. The Tribunal considered the nature and circumstances of the offending, the applicant's conduct since the convictions, written testimonials provided to the Tribunal, and the evidence and submissions made by the branch manager of the agency at which the applicant hoped to be employed. The Tribunal referred in particular to, and took comfort from, the information provided by the agency, its consciousness of the requirement for salespersons to be supervised, and the supportive and educational process for its agents. The Tribunal granted the application for review, but noted that if the applicant were to leave the work setting and structure of the agency, there "may be a case for further thought upon his next annual licence renewal point".³

³ *Revill*, above fn 2, at [42].

[25] In *Foot v The Registrar of the Real Estate Agents Authority*,⁴ the applicant had been convicted on charges under the Tax Administration Act 1994, of aiding and abetting a company to evade tax (10 charges, under s 148(1) of the Act), knowingly providing false, incomplete or misleading information to the Commissioner of Inland Revenue (two charges, under s 143A), and knowingly failing to provide an income tax return (one charge, also under s 143A). The offending involved the evasion of \$222,171 in income tax and GST. She was sentenced to eight months' home detention and 250 hours of community work. The Tribunal heard evidence from the applicant, the branch manager of the agency where she was employed, and the manager of an agency where she had previously been employed. The Tribunal also received testimonial statements supporting the applicant.

[26] The Tribunal recorded that it was satisfied that the agency employing the applicant was conscious of its obligations to supervise salespersons (under s 50 of the Act), and its ongoing supportive and educational processes. The Tribunal also recorded that the agency had well-regulated procedures and business management, and that the applicant had the support of a number of experienced persons in the industry. The Tribunal allowed the application for review, on the basis that the applicant's licence would be subject to certain conditions.

[27] We also refer to the judgment of his Honour Justice Nason in *Real Estate Agents Authority v A*, allowing the Registrar's appeal against a decision of the Tribunal to reverse a decision not to renew the licence of a salesperson ("A").⁵ In that case, A had been convicted on 26 charges of aiding and abetting a company (of which she was the sole director and shareholder) to apply PAYE deductions for a purpose other than payment to Inland Revenue, and five charges of aiding and abetting the same company to fail to furnish GST returns. The total amount of unpaid tax was \$233,866.31. She was sentenced to five months' community detention and 200 hours' community work. She was also ordered to make full reparation, by way of periodic payments. An order for name suppression was granted in the course of the criminal proceeding, and applied during the Tribunal and High Court proceedings.

⁴ *Foot v The Registrar of the Real Estate Agents Authority* [2015] NZREADT 24].

⁵ *Real Estate Agents Authority v A* [2017] NZHC 2929, [2018] NZAR 66.

[28] It was common ground that the genesis of A’s offending was an addiction to on-line gambling, as the money not paid to Inland Revenue was used to pay gambling debts. At the time of her offending, A had been a licensee for some 29 years, with no significant complaint as to her conduct.

[29] The factors that led his Honour to conclude that the Tribunal was wrong to allow A, a licence were:

[a] A had never acknowledged that she had been dishonest. She had paid employees’ money, which had been retained in order to pay their tax, into an account which she used for both personal and business spending, then used and lost it gambling. GST charges were also paid into this account and used for gambling.⁶

[b] The offending was similar in nature to a “crime involving dishonesty”. Pursuant to s 37 of the Act, a person who has been convicted of a “crime involving dishonesty” (as defined in s 2(1) of the Crimes Act 1961) within ten years preceding the application for a licence is not eligible to hold a licence.⁷ While the offending was not associated with A’s work in real estate, it was conduct which was likely to bring the industry into disrepute.⁸

[c] Whilst A had stood herself down from real estate agency work because of the charges she faced, and the agency in which it was proposed that she be engaged had set out conditions for her return to work, there was no acknowledgment that she had “exhibited frailties and risks which could impact on her real estate work generally, and in respect of which she needed special support and oversight given the nature of her offending”, how her work would be monitored, or a recognition that she had “personality traits that might create a risk for people who had to rely on her honesty in dealings they might have with her”.⁹

⁶ At [[34] and [37].

⁷ At [39].

⁸ At [88].

⁹ At [41]–[43].

- [d] A had minimised the nature and seriousness of her criminal conduct. His Honour also agreed with an observation by the District Court sentencing Judge, that she had not demonstrated real remorse for what she had done, rather that she was sorry for the situation she was in. His Honour considered there was an element of self-deception that must have been a significantly contributing factor in her original offending.¹⁰
- [e] A's and her employing agency's assertions as to disclosure of the convictions should have been given little weight, given that they had applied for and obtained orders suppressing their respective names.¹¹
- [f] There had been inadequate consideration of A's underlying personality trait of not facing up to her issues or problems, and given the brevity of the period between her offending and consideration of her application for renewal,¹² "there had been little opportunity and no evidence as to how she had set about changing her life so as to show that, if tempted, she would now have the strength of character to display the integrity and honesty required of a salesperson."¹³ His Honour observed, in a footnote, that "there may be a point in the future where she is able to do this".

Submissions

[30] Mr Eaton submitted that the Registrar was wrong to find that Mr Jones was not a fit and proper person to hold a real estate agent's licence, in that:

- [a] he was wrong to describe the convictions as being for tax evasion;
- [b] Mr Jones Snr had now been charged with tax offending, calling for a reconsideration of Mr Jones' culpability; and

¹⁰ At [48]–[56].

¹¹ At [57]–[67].

¹² A applied for renewal of her licence, disclosing the conviction, one month after the conviction, and before sentencing.

¹³ At [68]–[82].

[c] with a forward-looking focus it could not reasonably be found that Mr Jones' admitted tax offending disqualified him from obtaining a licence.

[31] Mr Eaton submitted that it is most important to accurately describe and comprehend the charges admitted by Mr Jones, and they were not charges of tax evasion. He submitted that the charges admitted by Mr Jones were under s 143A of the Tax Administration Act 1994, which is headed "Knowledge offences", in particular, s 143A(1)(d):

(1) A person commits an offence against this Act if the person—

...

(d) knowingly applies or permits the application of the amount of a deduction or withholding of tax made or deemed made under a tax law for any purpose other than in payment to the Commissioner

He submitted that tax evasion is a discrete offence (under s 143B, headed "Tax evasion or similar offence") and is seen as more serious by the courts of New Zealand.

[32] Mr Eaton also submitted that the fact that Mr Jones Snr has now been charged with tax offending is a significant development since the Registrar's decision to decline to renew Mr Jones' licence. He submitted that despite Mr Jones Snr having told Inland Revenue investigators that the decision not to pay the deducted and withheld sums to Inland Revenue was solely his, the charges against Mr Jones were advanced on the basis that he was the principal and only offender. He submitted that it was only when the trial was about to commence that Inland Revenue abandoned that position, and proceeded on the basis that Mr Jones was aware that PAYE and other deductions were not being paid, and failed to take steps to ensure it was paid.

[33] Mr Eaton submitted that had Inland Revenue accepted earlier that Mr Jones Snr was the principal offender, there was a very real prospect that Mr Jones would never have been charged – on the basis that the principal offender had taken responsibility for the offending. He submitted that it is very uncommon for multiple or all directors to be charged in respect of a company's tax obligation failings.

[34] Mr Eaton further submitted that the tax offences are “historical” (having been committed between five and nine years ago), and unrelated to Mr Jones’ career in real estate. He submitted that the sentencing Judge had accepted that the catalyst for the offending was the Christchurch earthquakes, that destroyed the companies’ hospitality businesses and ultimately gave rise to a fire sale which did not enable all obligations to be met.

[35] He submitted that the convictions were not for “crimes involving dishonesty”. He also submitted that, unlike A’s, Mr Jones’ offending did not involve concealment, as Inland Revenue was at all times aware of what was owed by the companies. Further, as continued name suppression had not been sought, there had been considerable publicity of Mr Jones’ convictions and sentence, such that the facts and circumstances of the offending were widely known.

[36] Mr Eaton submitted that there is no, or only a negligible, risk to the public, or the industry, in the future: there is unlikely to be a repeat of the earthquakes, and Mr Jones is no longer carrying on any business with his father. Mr Jones is not interested in carrying on any business other than real estate agency work. He also submitted that, unlike A, Mr Jones has no underlying personality trait which needs to be addressed before the Registrar could reasonably be confident that he is a fit and proper person to hold a licence.

[37] Mrs Appleton submitted for the Registrar that the decision to decline Mr Jones’ application to renew his licence on the basis that he was not fit and proper was appropriate, and made in accordance with the purpose of the Act, in light of the facts of Mr Jones’ case, and in accordance with established principles.

[38] Mrs Appleton acknowledged that the Registrar had been wrong to describe the convictions as being for “charges relating to tax evasion”, but submitted that he had correctly referred to “tax offences” in his letter of 15 April. She submitted that the initial reference to tax evasion rather than tax offending did not dilute the gravity of Mr Jones’ offending, and resulting convictions, for the purposes of the “fit and proper” test. She submitted that the offending was significant, and should be given weight for the purpose of the Registrar’s decision on Mr Jones’ fitness to hold a licence.

[39] Mrs Appleton submitted that the nature of Mr Jones' convictions, and his failure to notify the Registrar until after he had completed his sentence of home detention, called into question his fitness to continue to hold a licence. She submitted that consumers must be able to rely on the honesty and integrity of the licensees they deal with. Mrs Appleton submitted that disclosure obligations are fundamental to the role of a licensee, they permeate through the Act and underpin the expectation of professionalism and public confidence of real estate agents.

[40] She submitted that Mr Jones should have been fully aware that he was obliged to notify the Registrar of the charges, convictions, and sentence when they occurred, as a "change in circumstances", but had failed to do so. She also submitted that the tax offences of which Mr Jones was convicted were similar to the offences of dishonesty, convictions on which prohibit a licence being issued. She submitted that renewing a licence for an applicant with Mr Jones' convictions would not promote public confidence in the profession, and would be counter to the purposes of the Act.

[41] Mrs Appleton also submitted that even applying a forward-looking approach, it was still appropriate for the Registrar to decline Mr Jones' application for renewal. She submitted that Mr Jones was not a young or youthful offender: he was a mature businessman who was well aware of his tax obligations. Further, Mr Jones' fitness to hold a licence had been questioned in 2015. Mrs Appleton submitted that the convictions considered at that time came to light following a criminal conviction check. Mr Jones had not advised the Registrar of them.

[42] Mrs Appleton submitted that Mr Jones' offending was not "historical", as it occurred between 2010 and 2014. She submitted that the period of five years from the most recent offending could not render the offending "historic". She submitted that the period since Mr Jones' sentencing was too short for the Registrar to be able to have confidence that he had demonstrated a change of behaviour.

Discussion

[43] The Registrar's characterisation of Mr Jones' offending in his letter of 1 April 2019 as "tax evasion" was wrong. Offences of tax evasion are referred to in s 143B of the Tax Administration Act. Mr Jones' convictions were under s 143A. The fact that he referred to "tax offences" in his letter of 15 April does not change the fact that the Registrar's decision to decline Mr Jones' application for renewal, as expressed in his letter of 1 April, was based on a mis-statement of the offending.

[44] It is of concern that the Registrar did not state, in his letter of 1 April, that his decision to decline Mr Jones' application for renewal was also based on his failure to advise the Registrar of his conviction at an earlier stage. We note Mr Doherty's evidence that that factor, alone, would not have led him to decline the application. However, Mr Jones' failure to comply with his disclosure obligation was, as Mr Doherty stated, an important factor in his consideration of the application for renewal.

[45] We note that there is no evidence of the Registrar having given Mr Jones any prior notice of his intention to decline the application, and the reasons for doing so, and inviting submissions as to why the application should not be declined.

[46] Section 52 of the Act, which sets out the procedure for renewing a licence, incorporates the provisions of ss 36 ("Entitlement to licence"), 37 ("Persons prohibited from holding a licence"), and 43 ("Registrar to license applicant or decline application"), but does not contain any provision which would require the Registrar to give notice of an intention to decline the application. Section 55, as to the process for cancellation of a licence, provides:

Process for cancellation

- (1) The process for cancellation of a licence, ..., is as follows:
 - (a) the Registrar must give the licensee written notice of the Registrar's intention to cancel the licence; and
 - (b) the notice must—
 - (i) contain or be accompanied by a statement of the Registrar's reasons for the cancellation; and
 - (ii) state that the licensee has 10 working days within which to make written representations to the Registrar as to why the licence should not be cancelled; and

- (c) if any written representations are made by the licensee in accordance with paragraph (b)(ii), the Registrar must take those representations into account when deciding whether to cancel the licence; ...

[47] We note that in the case of A, the Registrar advised her that she intended to decline her application to renew her licence, and gave her ten working days to make written representations as to why the application should not be declined.¹⁴ A similar course was followed by the Registrar in the case of an application to renew a licence in *Napier v Registrar of the Real Estate Agents Authority*.¹⁵

[48] We commend that course of action to the Registrar. While we note Mrs Appleton's advice to us at the hearing that the status of a licensee in Mr Jones' position is "licence not renewed", rather than "licence cancelled", the immediate effect of declining an application to renew a licence is the same. Mr Jones is not eligible to carry out real estate agency work. His name has been removed from the public register. A refusal to renew a licence therefore has an immediate and significant effect on the licensee's livelihood.

[49] In the circumstances, we consider it advisable that where it is intended to decline a licensee's application to renew a licence, the Registrar ensures that the licensee is given full notice of the intention to decline renewal, and the reasons for that intention, and is given the opportunity to address the Registrar's particular concerns. Although in the present case Mr Jones himself addressed the issue of the convictions, he was not made aware that the Registrar regarded his failure to disclose them to be an important factor, or given the opportunity to make representations on the point, and he was not made aware that the Registrar considered that too little time had elapsed since Mr Jones was sentenced.

[50] We have concluded that the appropriate course is to direct the Registrar to give fresh consideration to Mr Jones' application. The application needs to be considered against the correct characterisation of the nature and circumstances of Mr Jones' offending, and his own personal circumstances. We do not consider we have sufficient

¹⁴ See *A v Registrar* [2017] NZREADT 10, at [9].

¹⁵ *Napier v Registrar of the Real Estate Agents Authority* [2017] NZREADT 64, at [13]–[17].

information on which to make our own assessment of whether Mr Jones is a fit and proper person to hold a licence.

[51] In particular, we do not have information as to Mr Jones' submission that his manager advised the Registrar that he had been stood down from the Agency, or evidence supporting his statement that he has not been engaged in any real estate agency work since the date of his guilty pleas. We note that a letter sent by the Registrar on 1 April 2019 stated that "Hayden Jones had an active employment record with Crest Realty Limited at the time the licence was expired".

[52] Further, there is no information on which we could assess any arrangements the Agency would put in place, if Mr Jones' licence were to be renewed, so as to ensure that public confidence in Mr Jones in particular, and the industry in general, could be promoted and maintained.

[53] In the light of that decision, it is not appropriate that we make any comment as to the respective submissions on behalf of the parties.

Decision

[54] We direct as follows:

- [a] The Registrar's decision to decline renewal of Mr Jones' Individual Agent's licence is quashed.
- [b] Any further submissions and material in support of Mr Jones' application for renewal of his licence may be submitted within ten working days of the date of this decision.
- [c] The Registrar is directed to consider Mr Jones' application for renewal afresh, taking into account any further submissions on his behalf.

[55] Pursuant to s 113 of the Act, the Tribunal draws the parties' attention to s 116 of Act, which sets out the right of appeal to the High Court. The procedure to be followed is set out in part 20 of the High Court Rules.

Hon P J Andrews
Chairperson

Ms C Sandelin
Member

Mr N O'Connor
Member