

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2019] NZREADT 29

READT 016/19

IN THE MATTER OF

An appeal under section 111 of the Real Estate Agents Act 2008

BETWEEN

HE (LOUIS) DUAN
Appellant

AND

THE REAL ESTATE AGENTS
AUTHORITY (CAC 416)
First Respondent

On the papers

Tribunal:

Hon P J Andrews, Chairperson
Mr G Denley, Member
Ms C Sandelin, Member

Submissions received from:

Mr Duan
Ms E Mok, on behalf of the Authority

Date of Decision:

10 July 2019

DECISION OF THE TRIBUNAL

Introduction

[1] Mr Duan has appealed against the decision of Complaints Assessment Committee 416, dated 26 March 2019, in which it made a finding of unsatisfactory conduct against him.

[2] The Authority accepts that the Committee erred in making that finding.

Background

[3] Mr Duan is a licensed salesperson engaged at New Zealand LJ International Ltd (trading as LJ Hooker Metro City Branch in Auckland (“the Agency”).

[4] On 15 August 2018 an Authority investigator visited the Agency and undertook a voluntary audit of the Agency’s listings. As a result of that audit, the Committee inquired into the listings of four properties. Following that inquiry, the Committee found the Agency, Mr Xian (Jacky Zeng) (a licensed agent), and Mr Duan had engaged in unsatisfactory conduct as follows:

- [a] (property at St Heliers, Auckland): breach of r 9.9 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012, on the grounds that the agency agreement for the property did not include a significant amount of information, including answers to disclosure questions;
- [b] (property at Union Street, Auckland City): breach of r 9.9, on the grounds that the agency agreement for the property did not include a significant amount of information, including answers to disclosure questions;
- [c] (property at Donald Road, Kaitaia): breach of r 9.6, on the grounds that no agency agreement for the property could be located; and
- [d] (property at Bremner Road, Karaka): breach of r 9.9, on the grounds that the agency agreement for the property did not include a significant amount of information, including answers to disclosure questions.

[5] In a decision dated 31 May 2019, the Committee made an order censuring the Agency, Mr Zeng, and Mr Duan, ordered the Agency to pay a fine of \$6,000, and ordered Mr Zeng and Mr Duan to each pay a fine of \$2,500.

Appeal submissions

[6] In his notice of appeal, Mr Duan submitted that the Committee was wrong to make the finding of a breach of r 9.6. He stated that the agency agreement for the Donald Road property was provided to the Authority, but ignored by the Committee.

[7] On behalf of the Authority, Ms Mok accepts that Mr Duan is correct: there was an agency agreement in place for the Donald Road property, and the agreement was provided to the Authority. She acknowledged that the Committee had overlooked the existence of the agreement, and that it erred in finding that Mr Duan engaged in unsatisfactory conduct by failing to have an agency agreement in place for the Donald Road property.

[8] Ms Mok submitted that the proper course is for the Tribunal to quash the Committee's finding of a breach of r 9.6 against Mr Duan and remit the matter back to the Committee for fresh consideration.

[9] Ms Mok noted that the Committee found a breach of r 9.6 by the Agency and Mr Zeng, as well as Mr Duan. Neither the Agency nor Mr Zeng has appealed. However, Ms Mok submits that as a matter of fairness, the Committee's findings of breaches of r 9.6 by the Agency and Mr Zeng should also be quashed and remitted back to the Committee for fresh consideration.

[10] Mr Duan has advised that he agrees that the findings of breaches of r 9.6 should be quashed, and the matter remitted back to the Committee for fresh consideration.

[11] We accept that the Committee erred in finding that there was no agency agreement for the Donald Road property, and therefore a breach of r 9.6. We also accept that the proper course is for the Committee to consider the matter afresh. As a

consequence, the Committee's penalty orders against Mr Duan, the Agency, and Mr Zeng, must also be quashed.

Orders

[12] The Committee's finding of breaches of r 9.6 by Mr Duan, the Agency, and Mr Zeng are quashed. The matter is remitted back to the Committee for fresh consideration.

[13] The Committee's penalty orders are also quashed.

[14] Pursuant to s 113 of the Act, the Tribunal draws the parties' attention to s 116 of the 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

Mr G Denley
Member

Ms C Sandelin
Member