

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2019] NZREADT 33

READT 061/18

IN THE MATTER OF

Charges under s 91 of the Real Estate
Agents Act 2008

BROUGHT BY

COMPLAINTS ASSESSMENT
COMMITTEE (CAC 521)

AGAINST

CHRISTOPHER WRIGHT
Defendant

On the papers

Tribunal:

Hon P J Andrews (Chairperson)
Mr G Denley (Member)
Mr N O'Connor (Member)

Submissions filed by:

Mr R W Belcher, on behalf of the
Committee

Date of Ruling:

5 August 2019

RULING OF THE TRIBUNAL
(Application by Committee to file amended charges)

Introduction

[1] Mr Wright has been charged by Complaints Assessment Committee (“the Committee”) with misconduct, pursuant to s 73(a) (disgraceful conduct) of the Real Estate Agents Act 2008 (“the Act”). The charge relates to money received by Mr Wright (bond payments and, in two cases, rent) from the tenants of five properties.

[2] In the charge dated 28 December 2018, the Committee set out particulars in respect of the five properties. In each case, the Committee alleged that Mr Wright received the money from the relevant tenant, and was required (in the case of bonds) to lodge it with Tenancy Services, or (in the case of rent) to pass it on to the landlord. The Committee further alleged that in each case Mr Wright failed to lodge the bond with Tenancy Services, or to pass the rent on to the landlord, and that on a specified date, Mr Wright admitted having misappropriated the money.

[3] The charge against Mr Wright is set down for a hearing, to commence in the District Court at New Plymouth on 9 September 2019.

[4] Statements of evidence of eight witnesses being called to give evidence for the Committee were filed in the Tribunal on 21 June 2019. A further statement of evidence was filed on 5 July 2019. On 18 July 2019, Mr Belcher advised the Tribunal that the Committee does not intend to call evidence from one of the persons for whom a statement of evidence had been filed.

[5] Mr Wright was required to file statements of evidence to be given by him or on his behalf by 12 July 2019. He has not done so.

[6] In a memorandum dated 11 July 2019, Mr Belcher applied on behalf of the Committee for leave to amend the charge. Mr Wright signalled his opposition to the application in an email to the Tribunal on 12 July 2019 saying:

[The Committee] has had 19 months to sort this out. It is just another chance for Mr Belcher and his company to have a feed at the trough of Money from the REAA and Real Estate Agents.

[7] The Tribunal directed that submissions in support of the Committee's application were to be filed and served by 19 July 2019, and that Mr Wright was to file and serve any submissions in opposition to the application by 26 July 2019. Submissions on behalf of the Committee were filed on 18 July 2019. Mr Wright has not filed any submissions in opposition to the application.

Submissions

[8] Mr Belcher submitted that the proposed amendments to the charge are minor in nature, and do not alter the core aspects of the charge, which are that Mr Wright misappropriated or otherwise dealt improperly with money that he received from tenants while acting as a property manager. He submitted that the specific amounts of money involved, and the affected properties, landlords, and tenants, had not changed.

[9] Mr Belcher further submitted that the proposed amendments do not prejudice Mr Wright in any way. He submitted that Mr Wright has been aware of the core aspects of the conduct alleged against Mr Wright since the investigation stage.

[10] As noted earlier, Mr Wright did not file any submissions in opposition to the application to amend the charges. We have recorded his immediate response to the application, to the effect that the application to amend is too late.

Discussion

[11] Pursuant to s 105 of the Act, the Tribunal may regulate its procedures as it thinks fit, subject to the rules of natural justice, the Act, and any regulations made under the Act. Regulation 13 of the Real Estate Agents (Complaints and Discipline) Regulations 2009) provides:

- (1) At the hearing of a charge, the Disciplinary Tribunal may, of its own motion or on the application of any party, amend or add to the charge if the Tribunal considers it appropriate to do so.
- (2) The Disciplinary Tribunal must adjourn the hearing if it considers that the amendment or addition would—
 - (a) take the person charged by surprise; or
 - (b) prejudice the conduct of the case.

[12] Mr Belcher referred us to the Tribunal's decision in *Complaints Assessment Committee 20002 v Lloyd*.¹ In that case, a licensee applied to strike out a charge against him on the grounds that it alleged conduct (forging initials on a document) occurring when he was not a licensee. The Complaints Assessment Committee applied to amend the charge so as to refer to the time at which it alleged that the licensee relied on the forged initials. The Tribunal allowed the application to amend the charge.

[13] The Tribunal rejected a submission that no amendment to a charge could be made until the actual hearing date. It held that s 105 of the Act gives the Tribunal the power to amend a charge before a hearing if that is needed. The caveat on the Tribunal's power is that any amendment must not unduly prejudice the defendant and/or the conduct of the hearing. The Tribunal further held that the power to amend a charge is not limited to the hearing, only, as to do so would be likely to seriously prejudice the defendant's ability to respond to the amendment.

[14] We accept Mr Belcher's submission that Mr Wright will not be prejudiced if the amendments sought by the Committee are allowed.

[15] First, Mr Wright had not filed a formal response to the charge, despite directions to do so. Accordingly, he has not provided a clear statement of the respects in which he admits or denies the particulars against him.

[16] Secondly, we accept that the proposed amendments do not alter the essence of the charge against him, which is that he misappropriated or otherwise dealt inappropriately with money he received from tenants while acting as a property manager. Thirdly, as the hearing of the charge is still four weeks away, Mr Wright has time to respond to the amended charge.

Decision

[17] Leave is given for the Committee to file an amended charge.

¹ *Complaints Assessment Committee 20002 v Lloyd* [2012] NZREADT 77.

[18] 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

Mr N O'Connor
Member