

**BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

**[2019] NZREADT 43**

**READT 025/19**

IN THE MATTER OF

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

BETWEEN

KENT THOMAS TROUGHTON  
Applicant

AND

THE REGISTRAR OF THE REAL  
ESTATE AGENTS AUTHORITY  
Respondent

On the papers

Tribunal:

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

Submissions received from:

Mr Troughton, Applicant  
Ms E Woolley, on behalf of the Registrar

Date of Decision:

10 October 2019

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**DECISION OF THE TRIBUNAL**

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## **Introduction**

[1] Mr Troughton has applied pursuant to s 112 of the Real Estate Agents Act 2008 (“the Act”) for a review of the Registrar’s decision to cancel his salesperson’s licence, conveyed to Mr Troughton in a letter dated 15 July 2019.

## **Background**

[2] Mr Troughton held a salesperson’s licence under the Act. On 29 June 2017, he voluntarily suspended his licence under s 58 of the Act. Pursuant to the Real Estate Agents Authority (Fees and Levies) Notice 2016, he was required to pay an annual fee to renew the voluntary suspension of his licence (“the annual suspension fee”).

[3] On 18 May 2019, an email was sent to Mr Troughton from the Regulatory Services Administration Team of the Authority, advising him that he was required to pay the annual suspension fee by 29 June 2019. Mr Troughton was also advised that pursuant to s 54(h) of the Act, the Registrar was required to cancel a licence if prescribed fees were unpaid. Mr Troughton was further advised that a person whose licence is cancelled is prohibited from being re-licensed for five years.

[4] A further email was sent to Mr Troughton on 15 June 2019, reminding him of the need to pay his annual suspension fee by 29 June 2019, and that the Registrar would be required to cancel his licence if the fee was not paid.

[5] Mr Troughton was again reminded of the need to pay his annual suspension fee, by a text message sent on 16 June 2019.

[6] Mr Troughton did not respond to the emails of 18 May and 15 June, or the text message of 16 June 2019.

[7] On 1 July 2019 Mr Troughton was advised by a letter (both emailed and posted) that his annual suspension fee was due on 29 June 2019. Mr Troughton was again advised that the Registrar was required under s 54(h) of the Act to cancel a person’s licence if the person had failed to pay any prescribed fees. Mr Troughton was advised that the Registrar intended to cancel his licence, and that he could provide the Registrar

with a written response as to why his licence should not be cancelled, within ten working days, to be received by 5 pm on 12 July 2019.

[8] On 15 July 2019, at 10.00 am, a letter was emailed and posted to Mr Troughton advising him that his licence would be cancelled on 16 July 2019, by reason of his having failed to pay the annual suspension fee, due for payment on 29 June 2019. Mr Troughton was advised of his right to apply to the Tribunal for a review of the Registrar's decision.

[9] On 15 July 2019, at 1.25 pm, Mr Troughton's mother telephoned the Authority and advised that Mr Troughton was overseas, and that the email address on the Authority's records was incorrect.

### **Submissions**

[10] Mr Troughton submitted that he had not received the Authority's email reminders, as they had been sent to an "outdated" address. He submitted that he had changed the address twice prior to the cancellation through the Authority's "RealMe" portal. He submitted that he had requested changes to his email address since the cancellation, and changed it again through the portal, to no effect.

[11] Mr Troughton submitted that the reminder text was sent to his valid mobile telephone number, but not received as he was travelling with a Czech Republic travel sim card and was relying on mail and email communication. He submitted that the physical letters were received in his Post Office box, but as he was overseas he could not collect them. He submitted that his parents who collected his mail were not able to do so, as his mother was receiving treatment for cancer at the time. He submitted that letters were collected on 15 July 2019, at which time his mother contacted the Authority.

[12] Mr Troughton submitted that he understood that it was his duty to check his mail and advise the Authority if he had a change of telephone number. He asked for compassion and consideration in the exceptional circumstances surrounding his failure to pay the suspension fee on time.

[13] On behalf of the Registrar, Ms Woolley submitted that the Registrar had made no error of fact or law in cancelling Mr Troughton's licence.

[14] She submitted that the Authority had no record of any changes made to Mr Troughton's registered email address, whether through RealMe or otherwise. She was not aware of any fault with RealMe that would have prevented Mr Troughton from changing his email address. She submitted that the Authority had no record of having received any telephone calls from any telephone numbers registered to Mr Troughton, and there were no notes on Mr Troughton's record that would indicate that he had attempted to speak to the Authority about changing his email address.

[15] Ms Woolley submitted that under the strict terms of the Act, the Registrar was required to cancel Mr Troughton's licence when he failed to pay the suspension fee, and had no discretion not to do so. Accordingly, she submitted, Mr Troughton's application for review must fail.

### **Relevant statutory provisions**

[16] Section 54 of the Act provides, as relevant:

#### **54 Cancellation of licence**

The Registrar must cancel a person's licence and remove that person's name from the register,–

...

- (h) if the person has failed to pay any prescribed fees or levies, or payment of the fee or levy has subsequently been dishonoured.

[17] Section 55 of the Act sets out the process to be followed by the Registrar:

#### **55 Process for cancellation**

- (1) The process for cancellation of a licence, other than by determination of the Tribunal under s 110 or at the request of the licensee under s 54(b), 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 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; and
  - (d) the Registrar must then decide whether to cancel the licence and notify the licensee of the Registrar's decision as soon as practicable.
- (2) If the Registrar decides to cancel the licence, the Registrar must–
- (a) include in the notice referred to in subsection (1)(d) the grounds for the decision and the date on which the cancellation takes effect; and
  - (b) specify in the notice that the licensee has a right of appeal to the Tribunal under section 112; and
  - (c) record the cancellation on the register as soon as practicable.

[18] Section 56 of the Act prescribes the effective date of cancellation of a licence:

**56 Effective date of cancellation**

The cancellation takes effect on the date specified by the Registrar in the notice given to the licensee under section 55(1)(d), which must be a date after the date of that notice.

[19] Section 154 of the Act sets out provisions as to giving notice. As relevant, s 154 provides:

**154 Service of notice and documents**

- (1) Any notice or document required or authorised by this Act to be given or served on any person, is sufficiently given or served if–
- ...
- (c) it is posted in a letter addressed to that person by name at that place of abode or business or address; or
  - (ca) it is transmitted to an electronic address or a fax number provided by the person
- ...
- (4) If any notice or other document is sent by post, it is, unless the contrary is shown, treated to have been given or served on the address at the time when the letter would have been delivered in the ordinary course of the post, and, in proving service of the notice, it is sufficient to prove that the letter was properly addressed and posted.

## **Discussion**

[20] We are satisfied that the Registrar has properly followed the prescribed procedure. In particular, Mr Troughton was advised (by email and posted letter) on 1 July 2019 of the Registrar's intention to cancel his licence, that the reason for cancellation was his failure to pay the annual suspension fee, and that he had ten working days within which he could make written representations as to why his licence should not be cancelled. He was then advised, again by email and posted letter, on 15 July that his licence would be cancelled as from 16 July 2019, because he had not paid the annual suspension fee. The email was sent to the email address registered for Mr Troughton, and the posted letter was sent to the Post Office box address registered for him. He did not respond to the Registrar's communications prior to his licence being cancelled.

[21] In addition, Mr Troughton was sent two prior reminders of the need to pay the annual suspension fee. He did not respond to those reminders.

[22] We note Mr Troughton's submission that he changed his email address on the Authority's RealMe portal, twice, before the cancellation. Ms Woolley submitted that he may have tried to change the address but failed to save the changes. Whatever occurred, it was Mr Troughton's responsibility, pursuant to s 67 of the Act, to give the Registrar written notice of any change in circumstances (which includes the information recorded in the register of licensees kept by the Registrar) within ten working days after the change. It was Mr Troughton's responsibility to ensure that his email address held by the Registrar was correct.

[23] As no written representations were received by the Registrar in response to the letter of 1 July 2019, the Registrar was required to cancel his licence. Section 54 is in the imperative: the Registrar "must" cancel a person's licence if one of subsections (a) to (h) applied. As Mr Troughton failed to pay the prescribed annual suspension fee, the Registrar was bound to cancel his licence by virtue of the mandatory provisions of s 54.

[24] We accept Ms Woolley’s submission that the Tribunal’s powers on review (set out in s 112 of the Act) are no wider than those given to the Registrar. Accordingly, having found that the Mr Troughton failed to pay the annual suspension fee, and that the Registrar was required to cancel his licence and followed the correct procedure in doing so, the Tribunal cannot interfere with the Registrar’s decision.

## **Result**

[25] We are satisfied that the Registrar made no error of law and followed the correct procedure in cancelling Mr Troughton’s licence following his failure to pay the annual suspension fee. Mr Troughton’s application for review is dismissed and the Registrar’s decision is confirmed.

[26] 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.

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Hon P J Andrews  
Chairperson

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Ms C Sandelin  
Member

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Mr N O’Connor  
Member