

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2019] NZREADT 44

READT 026/19

IN THE MATTER OF a charge laid under s 91 of the Real Estate Agents
Act 2008

BROUGHT BY COMPLAINTS ASSESSMENT COMMITTEE 519

AGAINST RAYMOND SAXTON
Defendant

On the papers

Tribunal: Hon P J Andrews, Chairperson
Ms C Sandelin, Member
Mr N O'Connor, Member

Submissions received from: Ms S Earl, on behalf of the Committee
Mr Saxton, Defendant

Date of Decision: 31 October 2019

**DECISION OF THE TRIBUNAL
(Charge and Penalty)**

Introduction

[1] On 25 July 2019, Complaints Assessment Committee 519 (“the Committee”) charged Mr Saxton with misconduct under s 73(c)(iii) of the Real Estate Agents Act 2008 (“the Act”). The Committee alleged that Mr Saxton wilfully or recklessly contravened r 6.3 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 (“the rules”).

[2] Rule 6.3 provides:

A licensee must not engage in any conduct likely to bring the industry into disrepute.

[3] Mr Saxton has admitted the charge. The Tribunal is therefore required to make a finding on the charge and determine the appropriate penalty.

Facts

[4] Mr Saxton has agreed to a summary of facts, which we set out in full:

1. At all relevant times [Mr Saxton] was a licensed salesperson under the Act, working for Barfoot and Thompson.
2. The complainants own a property at [Hobsonville]. [Mr Saxton] and the complainants were unknown to each other.
3. In September-October 2018, the complainants were in the process of selling their property privately. For this purpose they hired advertising signs and metal stakes. Prior to holding open homes on the weekend of 29-30 September, they placed these signs on the grass verges.
 - (a) Directly outside the property (three signs); and
 - (b) On the opposite side of the road to the property (two signs).
4. The signs and stakes had been hired by the complainants, at a cost of \$213.00.
5. The signs remained in the above locations on 1 October 2018.
6. On 1 October 2018, [Mr Saxton] drove past the property in his vehicle. He stopped his vehicle and removed all five signs and stakes, putting them into his vehicle and driving away.
7. Later that day the complainants discovered that their signage was missing. They were able to identify [Mr Saxton’s] number plate using their home CCTV footage. [One complainant] subsequently located [Mr Saxton’s] vehicle when passing the office that [he] works from. [The complainant] saw [Mr Saxton] entering his vehicle, and followed

him. [Mr Saxton] pulled over and spoke to [the complainant]. [Mr Saxton] admitted to [the complainant] that he had taken the signs and said he had disposed of them.

8. The complainants then attended the Barfoot and Thompson office that [Mr Saxton] works from and met with [his] manager to complain about [his] conduct.
9. Later on 1 October, the steel stakes were left outside the complainants' house.
10. The complainants made a formal complaint to police and a police officer spoke with [Mr Saxton] on 7 November 2018. Later that day [Mr Saxton] paid \$250.00 compensation to the complainants.
11. By way of explanation for his actions, [Mr Saxton] said that he believed the signs to be in contravention of Council bylaws and that he had had similar signs of his own removed.

Finding as to the charge

[5] In the light of Mr Saxton's admission of the charge, the Tribunal finds him guilty of misconduct.

Penalty principles

[6] The principal purpose of the Act is to "promote and protect the interests of consumers in respect of transactions that relate to real estate and to promote public confidence in the performance of real estate agency work."¹ The Act achieves these purposes by regulating agents, branch managers, and salespersons, raising industry standards, and by providing accountability through a disciplinary process that is independent, transparent, and effective.² These purposes are best met by penalties for misconduct and unsatisfactory conduct being determined in accordance with the need to maintain a high standard of conduct in the industry, the need for consumer protection, the maintenance of confidence in the industry, and the need for deterrence.

[7] A penalty should be appropriate for the particular nature of the misbehaviour, and the Tribunal should endeavour to maintain consistency in penalties imposed for similar conduct, in similar circumstances. The Tribunal should impose the least

¹ Section 3(1) of the Act.

² Section 3(2).

punitive penalty that is appropriate in the circumstances. While there is an element of punishment, rehabilitation is an important consideration.³

[8] Section 110(2) of the Act sets out the orders the Tribunal may make by way of penalty. As relevant to the present case the Tribunal may:

- [a] Make any of the orders that a Complaints Assessment Committee may impose under s 93 of the Act (these include censuring or reprimanding the licensee, and ordering the licensee to undergo training or education);
- [b] Impose a fine of up to \$15,000;
- [c] Order cancellation or suspension of the licensee's licence;

Submissions

[9] Ms Earl submitted for the Committee that conduct is in breach of r 6.3 if it is conduct that, if known to the public generally, would more likely than not lead members of the public to think that licensees should not condone it, or find it acceptable. She submitted that accepting such conduct would tend to lower the standing and reputation of the industry. She submitted that Mr Saxton's conduct was at least at the level of recklessness, in that he can be taken to have foreseen the possibility that his conduct was likely to be viewed as unacceptable, but proceeded with it regardless.

[10] Ms Earl submitted that it is relevant that Mr Saxton's conduct had the effect of causing inconvenience and financial loss for the complainants. She acknowledged that Mr Saxton has reimbursed the complainants for the loss of the signs, but notes that while the stakes were returned the same day, compensation for the destroyed signs was not paid until Mr Saxton was spoken to by the police approximately five weeks' later.

[11] Ms Earl accepted that Mr Saxton's actions were not carried out in order to gain an advantage for himself, and that he had no prior connection with the property. She

³ See *Complaints Assessment Committee 10056 v Ferguson* [2013] NZREADT 30, *Morton-Jones v The Real Estate Agents Authority* [2016] NZHC 1804, at [128] and *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1, at [97].

also accepted that the conduct is at the lower end of the range of misconduct. However, she submitted, his actions were clearly unacceptable, and amounted to damaging the property of another person. She submitted that the penalty imposed should reflect the Tribunal's expectation that licensees will maintain proper professional standards in their day to day conduct, and use proper avenues if they have concerns about the actions of others, rather than taking matters into their own hands.

[12] Mr Saxton made only very brief submissions to the Tribunal. He acknowledged that he had removed the signs, and that he was wrong to do so. He submitted that the complainants were themselves wrong to erect the signs, but acknowledged that "two wrongs did not make a right". He explained that his father was at the time seriously ill, which caused him stress, and he had an "uncharacteristic brain fade". He submitted that the complainants had not missed out on having signage for their open homes, and he had paid compensation.

Discussion

[13] Mr Saxton was properly charged with having breached r 6.3. His conduct in removing and destroying the signs put up by the complainants was conduct that was likely to bring the industry into disrepute. It was conduct that licensees should not condone, or find acceptable, and as such it lowers the standing and reputation of the industry. Irrespective of whether the complainants were in breach of a Council bylaw in putting up the signs (and that is not for us to determine), Mr Saxton's response was not appropriate.

[14] We take into account that Mr Saxton did not enter onto the complainants' property in order to remove the signs. He removed the signs from the grass verges outside the complainants' property. In the circumstances, we assess his conduct as being at a relatively low level in the range of misconduct.

[15] We were not advised of any previous disciplinary findings against Mr Saxton, and take that into account when determining penalty. We also take into account that he has reimbursed the complainants, albeit after their complaint to the Police, and that

he was under stress at the time. Nevertheless, Mr Saxton's conduct cannot be disregarded, or minimised.

[16] The appropriate order is for Mr Saxton to be censured, and ordered to pay a fine.

Orders

[17] Mr Saxton is censured, and ordered to pay a fine of \$2,000.00. The fine is to be paid to the Authority within 20 working days of the date of this decision.

[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

Ms C Sandelin
Member

Mr N O'Connor
Member