

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2019] NZREADT 52

READT 051/17

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

BROUGHT BY COMPLAINTS ASSESSMENT COMMITTEE 412

AGAINST GURPREET GREWAL
Defendant

Hearing: 19 November 2019, at Auckland

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

Appearances: Mr M Mortimer, on behalf of the Committee
No appearance by or on behalf of the Defendant

Date of Decision: 25 November 2019

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

Introduction

[1] On 21 December 2017, Complaints Assessment Committee 412 charged Mr Grewal with misconduct, as follows:

[a] Charge 1: Under s 73(c) of the Real Estate Agents Act 2008 (“the Act”) (wilful or reckless contravention of s 122 of the Act); and in the alternative, under s 73(b) of the Act (conduct constituting seriously negligent or seriously incompetent real estate agency work).

[b] Charge 2: Under s 73(a) of the Act (disgraceful conduct); and in the alternative, under s 73(b) of the Act.

[2] On 12 November 2019, the Tribunal gave leave to the Committee to amend the charges by changing the alternative charge in charge 2 to one of misconduct under s 73(c) of the Act (wilful or reckless contravention of reg 15 of the Real Estate Agents (Audit) Regulations 2009 (“the Audit Regulations”).

Formal proof hearing

[3] In its Minute (3) dated 22 August 2019, the Tribunal responded to advice from counsel for the Committee as to Mr Grewal’s whereabouts, as follows:

...

[2] Pursuant to a Chairperson’s Minute dated 16 April 2018, the charges against Mr Grewal have been stayed pending the outcome of Police investigations into the matters which were the subject of the charges laid by the Committee.

[3] In a memorandum dated 14 August 2018 counsel for the Committee, Mr Mortimer advised the Tribunal that:

[a] Mr Grewal faces two sets of criminal charges: a charge laid by the Commissioner of Inland Revenue, alleging a failure to account to the Commissioner for PAYE deductions, and four charges laid by the NZ Police of theft by a person in a special relationship (alleging that he transferred money out of his real estate company’s real estate trust account to pay other company debts);

[b] On 12 March 2019, Mr Grewal obtained a variation of his bail terms, to enable him to travel to India, for a period of 14 days, for the sole purpose of raising funds to pay the balance of outstanding PAYE,

and for other purposes set out by Mr Grewal on terms including the payment of a surety of \$10,000;

[c] Mr Grewal left New Zealand and has not returned, and has had no meaningful contact with New Zealand authorities, and a warrant has been issued for his arrest and forfeiture of the surety;

[d] Mr Mortimer understands that Mr Grewal's family has also left New Zealand (in breach of an undertaking given to the High Court that the family would remain in New Zealand); and

[e] Neither counsel who acted for Mr Grewal at the time the Committee's charges were laid, nor counsel acting for Mr Grewal in respect of his bail application currently has instructions to act on his behalf.

[4] Mr Mortimer submitted that as a result of Mr Grewal's apparent non-compliance with the terms of his bail, the forfeiture of the surety, and the length of time Mr Grewal has been absent from New Zealand, the Committee is proceeding on the basis that Mr Grewal does not intend to return to New Zealand. He submitted that it is unlikely that the criminal prosecutions will proceed, such that there is now nothing to prevent the disciplinary charges laid by the Committee being advanced.

[5] The Committee seeks a direction that the charges may now be determined by way of formal proof.

[6] The Tribunal directs as follows:

[a] A copy of Mr Mortimer's memorandum on behalf of the Committee and of this Minute is to be sent to Mr Grewal, addressed to the last known contact address held by the Authority, and copied to counsel who acted for him in the disciplinary proceeding and bail application.

[b] Mr Grewal is to be advised that he may respond to the Committee's request that the charges against him are determined by formal proof, within **14 days** of the date of this Minute. Any response by or on behalf of Mr Grewal is to be sent to the Tribunal and copied to the Committee (by counsel, Mr Mortimer).

[c] If no response is received from Mr Grewal, the Committee is to file affidavit evidence in support of the charges, together with an indexed and paginated indexed bundle of relevant documents, no later than **25 October 2019**.

[d] A hearing is to be scheduled in the week beginning **18 November 2019**, in Auckland. One day will be allocated.

[e] Submissions on behalf of the Committee are to be filed no later than **11 November 2019**.

[f] Further directions will be made, in the event that Mr Grewal responds to the Committee's request for a formal proof hearing.

[4] The Tribunal is satisfied that the steps directed in paragraphs [6][a] and [b] of the Tribunal's Minute (3) have been taken. There has been no response from Mr Grewal.

[5] The hearing of the charges against Mr Grewal was scheduled for 19 November 2019. Mr Grewal was advised of the date of hearing, at his last known email contact address. No response was received. Mr Grewal did not appear at the hearing, when it was called in the District Court at Auckland on 19 November 2019. Accordingly, the hearing proceeded by way of formal proof.

Background facts

[6] Mr Grewal has held a salesperson's licence since August 2009.

[7] He was the sole director and shareholder of Preet & Co Real Estate Limited ("the Agency"). Between 2012 and 2017, Preet & Co acquired ten Harcourts franchises in the South Auckland area. As required by s 122(3) of the Act, the Agency had a trust account to hold customer deposits (on the purchase price of properties) on behalf of vendor clients ("the Agency trust account"), together with other funds held on trust from clients and customers. The Agency trust account was governed by the provisions of the Act (in particular, ss 122 to 125), and the Audit Regulations.

[8] Mr Grewal was also the sole director and shareholder of Preet & Co Rentals Limited, which managed properties for landlord clients ("the property management company"). The property management company also had a separate account which was used for receiving and paying out rent money for its landlord clients ("the rental trust account").

[9] In late September 2017, the Real Estate Agents Authority was advised of concerns that \$1.2 million was missing from the Agency's trust account. An investigation was undertaken by the Authority's investigations team leader, Mr Gouverneur.

[10] The charges against Mr Grewal were laid following that investigation. Disciplinary charges were also laid against the Agency and two senior employees of the Agency, Mr Voordouw and Mr Mason. The charges against Mr Grewal were adjourned pending determination of the criminal charges against him (referred to in

the Tribunal's Minute (3)). The charges against the Agency were withdrawn following the Agency having been put into liquidation.

[11] The charges against Mr Voordouw and Mr Mason were heard by the Tribunal on 13 July 2018. The charges alleged that they each failed to make a report to the Authority as to Mr Grewal's conduct, as required by r 7.2 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012. In a decision dated 6 September 2018, both were found guilty of misconduct under s 73(b) of the Act (that their failure to report constituted seriously negligent or seriously incompetent real estate agency work.¹ In a penalty decision dated 2 November 2018, Mr Voordouw was censured and ordered to pay a fine of \$6,000, and Mr Mason was censured and ordered to pay a fine of \$4,000.²

Summary of the charges against Mr Grewal

[12] In Charge 1, the Committee alleges that Mr Grewal transferred \$1.2 million out of the Agency trust account in four transactions, and used the money to enable payments to be made to landlord clients of the property management company. The Committee alleges that this was misconduct under s 73(c) of the Act, as a wilful or reckless contravention of s 122 of the Act, or in the alternative, misconduct under s 73(b) of the Act, as seriously negligent or seriously negligent real estate agency work.

[13] In Charge 2, the Committee alleges that Mr Grewal provided to the Authority monthly trust reconciliation statements on 2 May and 2 June 2017 that were knowingly false. The Committee alleges that this was misconduct under s 73(a) of the Act, as being conduct that would reasonably be regarded by agents of good standing, or reasonable members of the public, as disgraceful, or in the alternative, misconduct under s 73(c) of the Act, as being a wilful or reckless contravention of reg 15 of the Audit Regulations.

¹ *Complaints Assessment Committee 412 v Grewal* [2018] NZREADT 47.

² *Complaints Assessment Committee 412 v Grewal* [2018] NZREADT 70.

Charge 1

Did Mr Grewal transfer money out of the Agency trust account in breach of s 122 of the Act?

[14] Section 122 of the Act provides, as relevant:

122 Duty of agent with respect to money received in course of business

(1) All money received by an agent in respect of any transaction in his or her capacity as an agent must be paid to the person lawfully entitled to that money in accordance with that person's directions.

...

(3) Pending the payment of any such money, the money must be paid by the agent into a general or separate trust account at any bank carrying on business in New Zealand under the authority of any Act and may not be drawn upon except for the purpose of paying it to the person entitled or as that person who in writing may direct.

(4) No money to which this section applies is available for payment of the agent's debts, nor may it be attached or taken in execution under the order or process of any court at the instance of any of the agent's creditors.

...

[15] The bank statements for the Agency trust account show that transfers totalling 41.2 million were made out of the Agency's trust account, as follows:

[a] \$450,000 on 1 February 2017

[b] \$150,000 on 1 March 2017

[c] \$400,000 on 3 April 2017

[d] \$200,000 on 2 August 2017

[16] Accordingly, in order to comply with s 122, the money transferred out of the Agency trust account could only be paid to the person lawfully entitled to it, or at that person's written direction, and it was not available for payment of any of the Agency's debts.

[17] We accept the Committee's evidence that the money transferred out of the Agency trust account was not paid to the client entitled to it, or as directed by that person in writing:

- [a] \$450,000 was transferred out of the Agency trust account on 1 February 2017, into the rental trust account. Following the transfer (and an additional transfer of \$10,000), the balance of the rental trust account was \$776,799.71. Immediately thereafter, a payment of \$773,540.63 was made to landlord clients by way of a batch payment process, leaving the rental trust account with a balance of \$3,259.08.
- [b] \$150,000 was transferred out of the Agency trust account on 1 March 2017, into the Head Office current account, then into the Agency's Future Savings account. The same day, \$370,000 (which included the \$150,000 from the Agency trust account) was transferred from the Future Savings account into the rental trust account. Following that transfer (together with \$18,250.64 made up of individual rent payments), the balance of the rental trust account was \$810,685.41. Immediately thereafter, a payment of \$797,515.66 was made to landlord clients, leaving the rental trust account with a balance of \$13,169.75.
- [c] \$400,000 was transferred out of the Agency trust account on 3 April 2017 into the Head Office current account. The same day, \$375,000 of the \$400,000 was transferred into the Future Savings account, then into the rental savings account. Following that transfer, the balance of the rental trust account was \$978,447.71. Immediately thereafter, a payment of \$957,471.54 was made to landlord clients, leaving the rental trust account with a balance of \$20,972.17.
- [d] \$200,000 was transferred out of the Agency trust account on 2 August 2017, into the Head Office savings account. The same day, \$340,000 was transferred from the Head Office savings account into the rental trust account. Immediately thereafter, a payment of \$434,810.88 was made to

landlord clients, leaving the rental trust account with a balance of \$5,954.25.

[18] There was no evidence to suggest that any vendor clients, on whose behalf the funds in the Agency trust account were held, were asked for and gave their consent in writing to the transfers out of the account. We are satisfied that none of the transfers out of the Agency trust account was to the vendor client entitled to the money transferred, or in accordance with written instructions from the vendor client.

[19] We are also satisfied that the payments out of the rental trust account to landlord clients could not have been made without the transfers from the Agency trust account. We find that the money transferred out of the Agency trust account, was ultimately used to pay landlord clients of the Agency's property management company, in breach of s 122 of the Act.

[20] The transfers were required to be authorised. Each of the transfers is recorded in the relevant documentation as having been authorised by Mr Grewal's personal logon code "PREETCO". At any one time, only two people could authorise the transfer of funds from the relevant accounts. At the time of the first, second, and third transfers, Mr Grewal and Mr Mason were authorised. At the time of the fourth transfer, Mr Grewal and Mr Poole (who replaced Mr Mason) were authorised.

[21] We accept Mr Mortimer's submission for the Committee that it cannot reasonably be said that the transfers out of the Agency trust account occurred accidentally – for example as a result of entering an incorrect account number suffix. That possibility can be excluded by the fact that there was a pattern of four transfers, in round figures, of the right amount of money required to cover the amount needed to pay landlord clients. We accept that the links between the transfers out of the Agency trust account and into the rental trust account eliminates the possibility that the payments were made unintentionally.

[22] We accept Mr Mortimer's submission that the fact that Mr Grewal's personal logon was used for all four transfers eliminates anyone other than Mr Grewal as the person who authorised them.

[23] Mr Mortimer referred us to Mr Grewal's statement to Mr Gouverneur, in which he admitted having been involved in the first transfer out of the Agency trust account, of \$450,000. Mr Grewal said the he was at the time expecting to receive that amount by way of loan finance from the bank, which was to be paid into the rental trust account. He said he mistakenly thought the bank had wrongly paid the moany into the Agency trust account, so transferred it into the rental trust account.

[24] However, we accept Mr Mortimer's submission that this explanation should be rejected. Mr Grewal admitted that he had no documentation as to the alleged loan, and he never took any steps to contact the bank about an alleged incorrect payment. Having rejected that explanation, we accept Mr Mortimer's submission that Mr Grewal effectively admitted that he knowingly made the first transfer out of the Agency trust account.

[25] We also note Mr Mortimer's reference to Mr Grewal having accepted that he "may have" authorised the fourth transfer, of \$200,000, but having also said that he had no knowledge of it at the time.

[26] Mr Grewal also suggested that his wife may have used his log-on details to authorise the second (\$150,000) and third (\$400,000) transfers. Mrs Grewal accepted in an interview that it was possible that she may have been responsible for those transfers as a result of mistyping account numbers. We accept Mr Mortimer's submission that we should reject the suggestion that the second and third transfers were the result of a typographical error. As he submitted, each transfer was made for the purpose of topping up the rental trust account so that payments could be made to landlord clients, and they are consistent with the purpose and methodology of the first and fourth transfers.

[27] Further, we accept that even if the transfers were made by Mrs Grewal, it was at Mr Grewal's direction, and he must bear the ultimate responsibility for them.

[28] Accordingly, we find that Mr Grewal is responsible for all four transfers out of the Agency trust account, in breach of s 122 of the Act.

Is Mr Grewal guilty of misconduct under s 73(c) of the Act?

[29] The Committee has charged Mr Grewal with misconduct under s 73(c) of the Act, which provides that a licensee is guilty of misconduct if the licensee's conduct:

...

(c) consists of a wilful or reckless contravention of–

(i) this Act; ...

[30] The Committee is required to establish, on the balance of probabilities, that Mr Grewal foresaw the possibility that his conduct might breach the Act, but proceeded regardless.³

[31] We accept Mr Mortimer's submission that real estate agencies' trust accounts are "sacrosanct", such that the idea that money could be transferred out and then used to meet other liabilities is completely contrary to licensees' duties to keep funds safe. We accept that the risk of his conduct being in breach of s 122 of the Act would have been obvious to Mr Grewal. As Mr Mortimer submitted, that is enough to establish, at the least, that Mr Grewal's breach of s 122 was reckless.

[32] However, we accept his submission that the purposeful nature of the transfers – to top up the rental trust account in order to make payments to landlord clients – establishes that they were intentional. Mr Grewal must have made each transfer in full knowledge that to do so would be in breach of s 122. Accordingly, we find that Mr Grewal wilfully breached s 122 of the Act. We therefore find him guilty of misconduct under s 73(c)(i) of the Act, on Charge 1.

Charge 2

Did Mr Grewal provide false reconciliation statements in breach of the audit Regulations?

[33] Regulation 15 of the Audit Regulations provides:

15 Duty to provide monthly list of balances and reconciliation statement

³ See *Real Estate Agents Authority (CAC 20004) v Clark* [2013] NZREADT 62, at [70]–[74]

- (1) Every agency must, at the end of each month, reconcile the balance of the agency's trust accounts to—
 - (a) the balance of the agency's cash book; and
 - (b) the total of the balances in the list required under subclause (3)(a)
- (2) Every agency must keep the reconciliation statements prepared in accordance with subclause (1) in the agency's cash book, or in any other appropriate manner.
- (3) Unless subclause (4) applies, every agency must, by 27 January and the 20th day of every other month, give to the agency's auditor—
 - (a) a list of the balances in each client's ledger account, and of the amount of money (if any) in each trust account, as at the end of the last preceding month or balance period; and
 - (b) the reconciliation statement referred to in subclause (1) for that month
- (4) If there is no money in any of the agency's trust accounts at the end of any month, the agency must give to the auditor a "nil" return.

[34] Mr Grewal's signature appears on a reconciliation statement dated 2 May 2017. It recorded that the balance of the Agency's trust account as at 30 April 2017 was \$3,570,283. However, the bank statement for the Agency's trust account records that the closing balance of the account as at 28 April 2017 was \$2,568,283.

[35] Mr Grewal's signature also appears on a reconciliation statement dated 2 June 2017. It recorded that the balance of the Agency's trust account as at 31 May 2017 was \$1,881,774.50. However, the bank statement for the Agency's trust account records that the closing balance of the account as at that date was \$905,069.41.

[36] We find that the reconciliation statements dated 2 May 2017 and 2 June 2017 were incorrect.

[37] On each of the reconciliation statements, Mr Grewal's signature appears on the following declaration:

I HEREBY CERTIFY in accordance with the requirements of section 15 of the Real Estate Agents' (Audit) Regulations 2009 that on [date] the amounts listed in the foregoing were held in my trust account for the credit of the respective clients. The total of the balance has been agreed with the trust cash book which in turn reconciles with the trust statement, as required by section 15, and has been shown in the foregoing reconciliation.

[38] Mr Grewal accepted in his interview with Mr Gouverneur that he had signed each of the declarations. He said that he did not read the reconciliations properly. We turn to consider whether he made a declaration that was “knowingly false”, as the Committee alleges, in each reconciliation statement.

Is Mr Grewal guilty of misconduct under s 73(a) of the Act?

[39] The Committee has charged Mr Grewal with misconduct under s 73(a) of the Act, which provides that a licensee is guilty of misconduct if the licensee’s conduct:

- (a) Would reasonably be regarded by agents of good standing, or reasonable members of the public, as disgraceful;

[40] We accept Mr Mortimer’s submission that to sign a trust account reconciliation declaration without reading it properly is at least reckless, and thus misconduct under s 73(c)(iii) of the Act. However, Mr Mortimer submitted that Mr Grewal knew that the reconciliation statements were incorrect when he signed each declaration, because of the transfers he had made out of the Agency’s trust account on 1 February, 1 March, and 3 April 2017, totalling \$1million, and should be found guilty of disgraceful conduct under s 73(a).

[41] As the Tribunal said in *Complaints Assessment Committee 10024 v Downtown Apartments Ltd (In Liq)*:⁴

The word disgraceful is in no sense a term of art. In accordance with the usual rules it is to be given its natural and popular meaning in the ordinary sense of the word.

[42] Mr Mortimer also referred us to the discussion of disgraceful conduct by his Honour Justice Woodhouse in *Morton-Jones v Real Estate Agents Authority*, where his Honour said:⁵

[29] ... If the charge is under s 73(a) the critical enquiry is whether the conduct is “disgraceful”. Conduct which involves a marked and serious departure from the requisite standards must be assessed as “disgraceful”, rather than some other form of misconduct which may also involve a marked and serious departure from the standards. The point is more than one of semantics because s 73 refers to more than one type of misconduct.

⁴ *Complaints Assessment Committee 10024 v Downtown Apartments Ltd (In Liq)* [2010] NZREADT 6, at [55].

⁵ *Morton-Jones v Real Estate Agents Authority* [2016] NZHC 1804, at [29].

In particular, s 73(b) refers to “seriously incompetent or negligent real estate agency work”. Work of that nature would also involve a marked and serious departure from particular standards; the standards to which s 73(b) is directed are those relating to competence and care in conducting real estate work.

[43] Thus, conduct charged against a licensee under s 73(a) may be found to be disgraceful if it meets the ordinary meaning of “disgraceful”, that is whether the licensee’s conduct would reasonably be regarded by agents of good standing or reasonable members of the public as disgraceful. When making this determination, the Tribunal takes into consideration the standards that an agent of good standing should aspire to, including any special knowledge, skill, training or experience such person may have.

[44] We have found that Mr Grewal made the transfers out of the Agency’s trust account on 1 February, 1 March, and 3 April 2017. We accept Mr Mortimer’s submission that it is not tenable to say that, when faced with the requirement to make a declaration as to the amount of money held in trust, Mr Grewal would not have turned his mind to the fact that he had removed, and spent, \$1million of client money held in the Agency’s trust account. We also accept that at that point, Mr Grewal had a clear motivation for signing the declarations, as doing so would conceal from the auditor (and therefore the Authority) that there was a significant amount of money missing from the Agency’s trust account.

[45] Further, at the time he signed the declarations, the Agency’s auditor had alerted the Agency (through its financial controller, who in turn had brought the matter to Mr Grewal’s attention) to the fact that the trust account reconciliations were not correct.

[46] The provisions of the Audit Regulations are a fundamental component of the achieving the purposes of the Act of the protection of the interests of consumers and the maintenance of confidence in licensees’ performance of real estate agency work. We find that a breach of the provisions of the Audit Regulations as to certifying the accuracy of the monthly Agency’s trust account reconciliation would reasonably be regarded by agents or good standing, and reasonable members of the public, as disgraceful.

[47] We find that Mr Grewal signed the trust account reconciliation declarations on 2 May and 2 June 2017, knowing that they were false. While that is grounds for a finding of misconduct under s 73(c)(iii) of the Act, we accept Mr Mortimer's submission that Mr Grewal's conduct in making the declarations, knowing that they were false, was disgraceful. We find him guilty of misconduct under s 73(a) of the Act on Charge 2.

Penalty

Submissions

[48] After hearing the Committee's evidence and submissions as to Charges 1 and 2, the Tribunal advised Mr Mortimer that it would make a finding of misconduct under s 73(c) of the Act on Charge 1, and invited him to make submissions as to penalty.

[49] Mr Mortimer submitted that Mr Grewal's licence has been voluntarily suspended since 10 October 2017. He submitted that cancellation of the licence is the only appropriate order, following the Tribunal's finding that Mr Grewal had wilfully transferred funds out of the Agency's trust account, in breach of s 122 of the Act. He submitted that the Tribunal should mark Mr Grewal's conduct as being at the most serious end of the range of misconduct, by imposing a penalty that reflects that seriousness.

[50] Mr Mortimer advised that the Committee understands that no individual client has suffered loss as a result of Mr Grewal's conduct. He therefore did not seek an order that Mr Grewal pays compensation. (We note Mr Mortimer's advice that the Agency's trust account has been reimbursed either by the Agency or by its franchisor.)

Sentencing principles

[51] 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."⁶ The Act achieves these

⁶ Section 3(1) of the Act.

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.⁷

[52] These purposes are best met by penalties for misconduct and unsatisfactory conduct being determined bearing in mind the need to maintain a high standard of conduct in the industry, the need for consumer protection, and the maintenance of confidence in the industry, and the need for deterrence.

[53] 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 punitive penalty that is appropriate in the circumstances. While there is an element of punishment, rehabilitation is an important consideration.⁸

[54] 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;

[55] In determining the appropriate penalty for misconduct, the nature of the misconduct will be considered along with other factors. In *Hart v Auckland Standards Committee 1 of The New Zealand Law Society* (in relation to a lawyer), the High Court noted that the "ultimate issue" is as to the practitioner's fitness to practise, and factors which will inform this decision include the nature and gravity of the charges, the manner in which the practitioner has responded to the charges (such as the practitioner's willingness to co-operate in the investigation, to acknowledge error or

⁷ Section 3(2).

⁸ 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].

wrongdoing, and to accept responsibility for the conduct), and the practitioner's previous disciplinary history.⁹

[56] Mr Grewal's breaches of s 122 of the Act, and reg 15 of the Audit Regulations, must be marked as being very serious breaches of his obligations as a licensee. As the Tribunal noted in its decision in *Burnett v Real Estate Agents Authority (CAC 404)*:¹⁰

... failure to comply with audit regulations is a potentially serious matter because the requirements to report as to the trust account on a monthly basis exist for the protection of the public. This reason is a very important aspect of the disciplinary process, if the public lose confidence in a real estate agent's ability to hold their money appropriately and in a well-regulated manner then the whole industry will suffer. It is therefore appropriate that these breaches are treated seriously by the Committee and the Tribunal.

[57] In considering the appropriate penalty, we also take into account the fact that Mr Grewal chose to leave New Zealand, and not participate in the disciplinary proceedings. He has not acknowledged his offending, and he has not expressed any remorse or concern as to the risk he incurred regarding vendor clients' funds held in the Agency trust account. We agree with Mr Mortimer, that cancellation of his licence is the only appropriate response to Mr Grewal's offending. He is not fit to hold a licence as a salesperson in the industry.

[58] It is also appropriate to mark the extreme seriousness of Mr Grewal's offending by making an order for censure, and imposing the maximum fine available to us.

Orders

[59] We make the following orders:

[a] Mr Grewal is censured;

[b] We order that his licence is cancelled, as from the date of this decision;
and

⁹ *Hart v Auckland Standards Committee 1 of The New Zealand Law Society* [2013] NZHC 83; [2013] 3 NZLR 103, at [185]–[189].

¹⁰ *Burnett v Real Estate Agents Authority (CAC 404)* [2017] NZREADT 2, at [12].

[c] We order that he is to pay a fine of \$15,000 to the Authority, within 20 working days of the date of this decision.

[60] 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