

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2019] NZREADT 56

READT 061/18

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

BROUGHT BY COMPLAINTS ASSESSMENT COMMITTEE 521

AGAINST CHRISTOPHER WRIGHT
Defendant

On the papers

Tribunal: Hon P J Andrews, Chairperson
Mr J Doogue, Member
Mr N O'Connor, Member

Submissions received from: Mr R W Belcher, on behalf of the Committee

Date of Decision: 10 December 2019

**DECISION OF THE TRIBUNAL
(PENALTY: VARIATION OF ORDER AS TO COMPENSATION; ORDER
TO PAY COSTS)**

Introduction

[1] In its decision issued on 13 November 2019 the Tribunal found Mr Wright guilty of misconduct under s 73(a) of the Real Estate Agents Act 2008 (disgraceful conduct) (“the Act”).¹ The Tribunal recorded in that decision that had it been open to the Tribunal to do so, it would have ordered cancellation of Mr Wright’s licence under the Act.² As Mr Wright had surrendered his licence, cancellation was not available. The Tribunal ordered Mr Wright to pay compensation to landlords and the Agency, in respect of payments of bond money and rent misappropriated by him (“the compensation orders”).³

[2] This decision addresses two matters:

[a] The Real Estate Authority’s request for variation of the compensation orders; and

[b] The Committee’s application for an order that Mr Wright pay costs to the Committee.

The compensation orders

[3] The Tribunal directed that Mr Wright was to pay the sums directed to the Authority, for forwarding to the respective payees, within 20 working days of the date of the decision.

[4] The Tribunal has been advised that the Authority is not in a position to receive compensation from Mr Wright, then pass it on to those entitled to it. The Authority has asked that the compensation orders be varied so as to provide that the payments are to be made directly to those entitled to them.

[5] The compensation orders will be varied so as to provide as follows:

¹ *Complaints Assessment Committee 521 v Wright* [2019] NZREADT 49.

² At [64].

³ At [70]-[71].

Properties owned by the Porotene Trust, payable to the trustees of the Porotene trust

- [a] Pohutukawa Place: \$1,600 (bond)
- [b] Tiromoana Crescent: \$1,700 (bond)
- [c] George Street: \$1,800 (bond) and \$450 (initial rent) (Total: \$2,250)

Property owned by the McCourt & Rozgon Family Trust

- [d] Tothill Street: \$1,400 (bond), to be paid to the Agency
- [e] Tothill Street: \$6,300 (rent), to be paid to Ms J A Rozgon

Property owned by Mr and Mrs Smallman, payable to Mr T H Smallman

- [f] Paynters Avenue: \$1,640 (bond)

[6] The compensation payable to the trustees of Porotene Trust (in total, \$5,550), the McCourt & Rozgon Family Trust (\$6,300), the Agency (\$1,400), and to Mr and Mrs Smallman (\$1,640) must be paid to the respective payees, within 20 working days of the date of this decision. The Tribunal notes the Authority's advice that, with the permission of the relevant payees, it is willing to assist in the process by providing payees' contact details to Mr Wright.

Committee's application for costs

Jurisdiction to order payment of costs

[7] As from 14 November 2018, s 110A of the Act has provided as follows:⁴

110A Costs

- (1) In any proceeding under this Act, the Disciplinary Tribunal may make any award as to costs that it thinks fit, whether or not it grants any other remedy.

⁴ Section 110A was inserted by section 244 of the Tribunals Powers and Procedures Legislation Act 2018.

- (2) Without limiting the matters that the Disciplinary Tribunal may consider in determining whether to make an award of costs under this section, the Disciplinary Tribunal may take into account whether and to what extent, any party to the proceedings—
 - (a) has participated in good faith in the proceedings;
 - (b) has facilitated or obstructed the process of information gathering by the Disciplinary Tribunal;
 - (c) has acted in a manner that facilitated the resolution of issues that were the subject of the proceedings.
- (3) [Not relevant to this proceeding]
- (4) A person to whom costs are awarded under this section, but who has not been paid in full, may file a copy of the order in the District Court, where it may be enforced for so much of the amount as is still owing as if it were a judgment of the District Court.

Submissions

[8] Mr Belcher noted that this is the first time the Tribunal has considered an application for costs in relation to charges brought under the Act. He submitted that in proceedings involving charges successfully brought by a Complaints Assessment Committee, the Committee should generally (although not invariably) be awarded costs. He submitted that a licensee found guilty of charges filed by a Committee should generally expect to pay at least some of the Committee's costs.

[9] Mr Belcher submitted that this reflects the purposes of the Act, in particular that of providing accountability through a disciplinary process that is independent, transparent, and effective.⁵ He submitted that an order for costs will recognise that the costs associated with charges matters are borne by members of the real estate industry. He submitted that the following matters are relevant in this case:

- [a] Mr Wright did not act in good faith in relation to the proceeding, he displayed a rude and dismissive attitude towards the Committee and its legal representative, failed to comply with the Tribunal's directions, and failed to follow through on assurances given in relation to the proceeding.

⁵ Section 3(2)(c) of the Act.

[b] Mr Wright obstructed the process of information gathering by the Committee, by failing to engage in the proceeding in any meaningful way. He failed to file a response to the charges, and he failed to assist the Tribunal by way of submissions or evidence, despite indicating that he would and being directed to do so. He attended part of the hearing but declined to provide any submissions or evidence.

[c] Mr Wright failed to act in a manner that facilitated resolution of the issues that were the subject of the proceeding. Mr Belcher referred to the matters set out in paragraphs [a] and [b], above.

[10] Mr Belcher submitted that Mr Wright's conduct in relation to the proceeding had been deplorable, as he had been openly hostile towards the Committee, and had shown a complete lack of respect for the Tribunal. He submitted that Mr Wright's actions had forced the Committee to take numerous steps it would not otherwise have been required to take.

[11] The Tribunal directed the Committee to provide information as to its costs in relation to the charges against Mr Wright. Mr Belcher provided time records showing the time spent on the matter (from reviewing the file for preparation of disciplinary charges through to the conclusion of the proceeding), and the total cost (by application of the relevant "All of Government" hourly rate. This resulted in total legal costs of \$53,574 (exclusive of GST and disbursements).

Discussion

[12] The Tribunal is given a discretion as to orders for costs. That discretion is to be exercised in accordance with the Act, on the particular circumstances of the case before the Tribunal. In his judgment in *TSM v A Professional Conduct Committee*, his Honour Justice Palmer set out established principles as to orders for costs in professional disciplinary proceedings, as follows:⁶

⁶ *TSM v A Professional Conduct Committee* [2015] NZHC 3063, at [21], citing *Vatsayann V Professional Conduct Committee Of The New Zealand Medical Council* [2012] NZHC 1138, at [34], per Priestley J.

- (a) professional groups should not be expected to bear all the costs of the disciplinary regime;
- (b) members who appeared on charges should make a “proper contribution” towards costs;
- (c) costs are not punitive;
- (d) the practitioner’s means, if known, are to be considered;
- (e) a practitioner’s defence should not be deterred by the risks of a costs order; and
- (f) in a general way 50 percent of reasonable costs is a guide to an appropriate costs order subject to a discretion to adjust upwards or downwards.

[13] We accept that the Committee’s legal costs of \$53,574.50 are reasonable. We have no doubt that the costs were higher than they would otherwise have been, had Mr Wright adopted a different approach to the proceeding.

[14] We also accept Mr Belcher’s submission that Mr Wright failed to participate in good faith in the proceeding, failed to facilitate (and obstructed) the process of information gathering by the Committee, and failed to act in a manner that facilitated the resolution of the charges. Mr Belcher’s characterisation of Mr Wright’s response to, and conduct during, the proceeding is accepted.

[15] Mr Wright was found guilty of serious offending. Money received by a property manager on behalf of landlords must be held for the intended recipients, and not used for any other purpose. Mr Wright’s misappropriation of money paid to him was conduct that was directly contradictory to the purposes of the Act of promoting and protecting the interests of consumers in respect of transactions relating to real estate, and promoting public confidence in real estate agency work. Mr Wright’s culpability was aggravated by failure to respond appropriately to the charges. It is appropriate that an order is made that he contribute to the Committee’s costs. Those costs should not be borne solely by members of the industry.

[16] Mr Wright has provided no information as to his financial position.

[17] Taking the finding of misconduct under s 73(a) of the Act (disgraceful conduct) into account, and his failure to respond appropriately to the charges, we have

concluded that Mr Wright must be directed to pay a substantial contribution of \$25,000 towards the Committee's costs.

Orders

[18] The compensation orders are varied, in that the compensation payable to the trustees of Porotene Trust (in total, \$5,550), the McCourt & Rozgon Family Trust (\$6,300), the Agency (\$1,400), and to Mr and Mrs Smallman (\$1,640) must be paid to the respective payees, within 20 working days of the date of this decision.

[19] Mr Wright is ordered pursuant to s 110A of the Act to pay \$25,000 to the Authority, as a contribution towards the Committee's costs. The payment must be made within 20 working days of the date of this decision.

[20] 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 J Doogue
Member

Mr N O'Connor
Member