



[1] Mr Duan has filed an appeal under s 111 of the Real Estate Agents Act 2008 (“the Act”) against the decision of Complaints Assessment Committee 1901 (“the Committee”) dated 30 January 2020, in which the Committee found that Mr Duan had engaged in unsatisfactory conduct.

[2] The Committee’s substantive decision followed a decision by the Tribunal that Committee had erred in making a finding of unsatisfactory conduct against Mr Duan, and that the Committee should consider the matter afresh.<sup>1</sup> The Committee found that Mr Duan had breached r 9.6 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 without having a signed agency agreement in place, r 9.9, by having an agency agreement signed without having all material particulars inserted, and r 10.2, by failing to provide appraisals in writing.

[3] The Committee has not issued a decision as to penalty orders. The Tribunal understands that consideration of penalty has been deferred pending the outcome of Mr Duan’s appeal.

[4] Mr Duan’s appeal is only in respect of the Committee’s finding that he breached r 9.6. He has not appealed against the Committee’s finding that he breached rr 9.9 and 10.2.

[5] In a memorandum dated 5 March 2020, counsel for the Authority advised that the Authority accepts that the Committee erred in finding that Mr Duan had engaged in unsatisfactory conduct by breaching r 9.6. The Authority accepts that in respect of the four properties referred to in the Committee’s decision, Mr Duan had an agency agreement in place. The Authority submits that, by consent, Mr Duan’s appeal should be allowed.

[6] The Tribunal accepts the Authority’s submission. It is apparent that agency agreements for the four properties referred to by the Committee were in place, such that the Committee erred in finding that Mr Duan breached r 9.6.

[7] Mr Duan’s appeal against the finding that he breached r 9.6 is, therefore allowed. As recorded above, Mr Duan had not appealed against the findings that he breached rr 9.9 and

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<sup>1</sup> *Duan v Real Estate Agents Authority (CAC 416)* [2019] NZREADT 29.

10.2. The Committee should therefore proceed now to consider what penalty orders, if any, should be made pursuant to s 93 of the Act.

[8] 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.

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Hon P J Andrews  
Chairperson

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Mr G Denley  
Member

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Ms C Sandelin  
Member