

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2023] NZREADT 18

Reference No: READT 005/2023

IN THE MATTER OF

An application for review of a Registrar's
decision under s 112 of the Real Estate
Agents Act 2008

BETWEEN

AMARPAL SINGH OBEROI
Applicant

AND

**THE REGISTRAR OF THE REAL
ESTATE AGENTS AUTHORITY**
Respondent

Hearing on the papers

Tribunal:

D J Plunkett (Chair)
G J Denley (Member)
F J Mathieson (Member)

Representation:

The applicant:
Counsel for the respondent:

Self-represented
G Maslin

DECISION
Dated 28 July 2023

INTRODUCTION

[1] Amarpal Singh Oberoi (the applicant) has filed an application under s 112 of the Real Estate Agents Act 2008 (the Act) for review of the Registrar's determination on 28 March 2023 to cancel his licence.

[2] The Registrar cancelled Mr Oberoi's licence under s 54(d) of the Act, because he had not completed the mandatory continuing professional development (CPD) requirements.

BACKGROUND

[3] Mr Oberoi previously held a salesperson's licence under the Act.

[4] On 14 October 2022, the Real Estate Agents Authority (the Authority) sent an email to Mr Oberoi advising that he had not completed the required 10 hours of 2022 verifiable CPD. He had to do so by 31 December 2022. If not, the Registrar must cancel his licence, in which case he would not be able to apply for another licence for five years.

[5] In an email on 17 November 2022, the Registrar reminded Mr Oberoi to complete the 2022 CPD requirements by 31 December 2022.

[6] On 16 December 2022, the Authority sent an email to Mr Oberoi advising that it did not have a record that he had completed the 2022 verifiable CPD. It had to be completed by 31 December 2022. If his licence was cancelled, he would not be able to apply for another licence for five years.

[7] On 8 February 2023, the Authority wrote a letter to Mr Oberoi (sent by post and email) giving notice that the Registrar intended to cancel his licence as he had not completed the required 10 hours of verifiable CPD by 31 December 2022. He was given 10 working days to respond as to why the licence should not be cancelled.

[8] There was no response from Mr Oberoi to any of the Registrar's communications.

Licence cancelled

[9] On 28 March 2023, the Registrar wrote to Mr Oberoi (by post and email) cancelling his licence with effect from 29 March 2023, because he had not completed the 2022 verifiable CPD training by 31 December 2022.

REVIEW APPLICATION

[10] On about 29 March 2023, Mr Oberoi sought review by the Tribunal of the Registrar's decision of 28 March 2023 to cancel his licence.

[11] In his application to review, Mr Oberoi said the Authority's emails went to "spam" and the posted letter was lost by his flatmates. He understands it is his responsibility to check his mail, but unfortunately, he missed it due to these circumstances. He would make sure this type of negligence would not happen in the future.

[12] Following a telephone conference on 19 May 2023, the Tribunal issued a Minute (29 May 2023) setting out a timetable for submissions. Submissions were received from the Registrar (12 July 2023) but not from Mr Oberoi.

JURISDICTION AND PRINCIPLES

[13] Section 54 of the Act stipulates the Registrar's power to cancel a licence in certain circumstances, including the failure to complete continuing education:

54 Cancellation of licence

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

...

- (d) if the person has failed to complete any continuing education required by practice rules made by the Authority pursuant to section 15; or

...

[14] The Registrar must follow the process specified in s 55.

[15] A licensee's CPD requirements are set out in the Real Estate Agents (Continuing Professional Development Rules) Notice 2018. There is an annual requirement and a requirement following suspension for 12 or more months.¹

[16] The Tribunal has found that s 54 is written in the imperative and the Registrar "must" cancel a person's licence if one of the subsections (a) to (h) applies.²

¹ See Real Estate Agents (Continuing Professional Development Rules) Notice 2018, cl 7.

² *Troughton v Registrar of the Real Estate Agents Authority* [2019] NZREADT 43 at [23]; *Callaghan v Registrar of the Real Estate Agents Authority* [2019] NZREADT 47 at [17]; and *Chen v Registrar of the Real Estate Agents Authority* [2020] NZREADT 53 at [8]–[9].

[17] A licensee whose licence is cancelled has the right to seek review of the Registrar's determination under s 112 of the Act:

112 Application to Tribunal to review determination by Registrar

- (1) An applicant may apply to the Tribunal against a determination of the Registrar that adversely affects the applicant within 20 working days after the date the applicant is notified of the determination.

...

- (4) After conducting the review, the Tribunal may confirm, reverse, or modify the decision of the Registrar.
- (5) If the Tribunal reverses or modifies a determination of the Registrar, it may exercise any of the powers that the Registrar could have exercised.

[18] Such an application must be conducted on the papers, unless the applicant requests otherwise.³

[19] The Tribunal's powers on review are no wider than those given to the Registrar. If one of the circumstances listed in s 54 is found to exist and the Registrar has followed the correct procedure, the Tribunal cannot interfere with the Registrar's decision.⁴

DISCUSSION

[20] It is not disputed by Mr Oberoi that he was correctly required to complete the specified 2022 CPD hours by a certain date, that the required communications were sent and hence the statutorily prescribed process was followed, and that he did not complete those hours by the deadline. That being the case, the Registrar "must" cancel his licence, as s 54(d) stipulates.

[21] Mr Oberoi was clearly advised of the requirement to complete CPD and the consequences of not doing so. He was reminded of the requirement and given a number of opportunities of satisfying them. It is unfortunate that the emails went to "spam" and the intention to cancel letter was lost by his flatmates. As acknowledged, it is Mr Oberoi's responsibility to ensure he receives his correspondence. He does not dispute that the correspondence was sent to his electronic and postal addresses registered with the Authority.

³ Real Estate Agents Act 2008, s 112(3).

⁴ *Troughton*, above n 2, at [24]; and *Callaghan*, above n 2, at [18].

Conclusion

[22] There was no error of fact or law by the Registrar, who was compelled by statute to cancel Mr Oberoi's licence for failing to complete the required CPD hours by the deadline.

OUTCOME

[23] The application is dismissed and the Registrar's decision is confirmed.

D J Plunkett
Chair

G J Denley
Member

F J Mathieson
Member