

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2023] NZREADT 30

Reference No: READT 016/2023

IN THE MATTER OF

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

BETWEEN

KRYSTAL TURNER
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
M Clement

DECISION
Dated 12 October 2023

INTRODUCTION

[1] Krystal Turner (the applicant) has filed an application under s 112 of the Real Estate Agents Act 2008 (the Act) for review of the determination of the Registrar of the Real Estate Agents Authority (the Registrar) on 9 August 2023 to cancel her licence. It was cancelled under s 54(h) on the ground she had not paid a prescribed fee.

BACKGROUND

[2] Ms Turner held a salesperson's licence under the Act.

[3] The applicant voluntarily suspended her licence on 25 July 2021.

[4] On 13 June 2023, the Authority sent an email to the applicant reminding her that if she wished to keep her licence suspended, she was required to pay the annual suspension fee by 25 July 2023. If the prescribed fee was unpaid, her licence "must" be cancelled and she would be prohibited from being relicensed for five years.

[5] On 11 July 2023, the information sent on 13 June 2022 was sent again by email to the applicant.

[6] On 25 July 2023, the Registrar sent a letter to the applicant (by post and by email at 9:24 am) informing her she was due to pay her annual suspension fee on 25 July 2023. A person's licence "must" be cancelled and their name removed from the public register if a prescribed fee was unpaid. The Registrar advised his intention to cancel her licence. She had 10 days to provide a written response as to why her licence should not be cancelled.

[7] The applicant phoned the Authority on 1 August 2023 at 12:38 pm to say she wanted to pay the annual fee. She had been unwell. She was advised to send an email. The applicant duly sent an email to the Authority that day at 12:43 pm stating she had been sick and was unable to pay the annual fee. She could now pay it.

[8] On 9 August 2023, the Registrar wrote to the applicant advising that her licence would be cancelled the following day because she had not paid the annual suspension fee due on 25 July 2023. She was prohibited from being licensed for five years.

REVIEW APPLICATION

[9] On about 16 August 2023, Ms Turner sought review by the Tribunal of the Registrar's decision to cancel her licence.

[10] In her application for review, the applicant says she has been going through a very rough patch in her life, dealing with a range of health issues that led to hospitalisation. She faced significant challenges and had been unable to fulfil her obligations, such as paying the required fee on time. She would like the opportunity to make things right. A letter from her family doctor (14 August 2023) sets out a list of conditions and medication.

[11] Following a telephone conference on 1 September 2023, a Minute was issued by the Tribunal on the same day setting out a timetable for evidence and submissions.

[12] The Tribunal received no submissions from the applicant. A bundle of documents (6 September 2023) and a memorandum (29 September 2023) were received from counsel for the Registrar.

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 pay a prescribed fee:

54 Cancellation of licence

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

...

- (h) if the person has failed to pay any prescribed fees or levies, or payment of the fee or levy has subsequently been dishonoured.

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

[15] 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 subss (a) to (h) applies.¹

¹ *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].

[16] 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.

[17] Such an application must be conducted on the papers, unless the applicant requests otherwise.²

[18] 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.³

DISCUSSION

[19] It is not disputed by Ms Turner that she was correctly required to pay a suspension fee by a certain date, that the required communications were sent and hence the statutory process followed, and that she did not make the payment by the deadline. She has not identified any error of fact or law by the Registrar. That being the case, the Registrar "must" cancel her licence, as s 54(h) stipulates.

[20] It is unfortunate that the applicant was unwell and unable to pay the fee, but neither the Registrar nor the Tribunal have a discretion to have regard to her circumstances on any compassionate basis.

Conclusion

[21] There was no error by the Registrar who was compelled by statute to cancel Ms Turner's licence.

² Real Estate Agents Act 2008, s 112(3).

³ *Troughton*, above n 1, at [24]; and *Callaghan*, above n 1, at [18].

OUTCOME

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

[23] Pursuant to s 113 of the Act, the Tribunal draws the parties' attention to s 116, setting out the right of appeal to the High Court.

PUBLICATION

[24] Having regard to the interests of the public in knowing the status of licensees and also the Tribunal's jurisprudence, balancing that against the privacy of the individuals involved, it is appropriate to order publication of the decision.

D J Plunkett
Chair

G J Denley
Member

F J Mathieson
Member