

**BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

[2024] NZREADT 05

Reference No: READT 001/2023

**IN THE MATTER OF**

Charges laid under s 91 of the Real  
Estate Agents Act 2008

**BROUGHT BY**

**COMPLAINTS ASSESSMENT  
COMMITTEE 2106**

**AGAINST**

**YANKAI PAUL PANG**  
Defendant

Hearing in Auckland on 13 December 2023

Tribunal:

D J Plunkett (Chair)  
G J Denley (Member)  
P N O'Connor (Member)

Appearances:

Counsel for the Committee:

E Mok

The Defendant:

Self-represented

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**DECISION (PENALTY)**

**Dated 06 March 2024**

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## **INTRODUCTION**

[1] In a decision issued on 8 January 2024, the Tribunal found Mr Pang, the defendant, acted in a transaction without having direct contact with his vendor client and inserted the client's signature and initial on documents himself. He was found to have wilfully breached rr 5.1, 6.3, 9.6, 9.7, 12.2 and 12.3 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 (the Rules). This amounted to misconduct pursuant to s 73(c)(iii) of the Real Estate Agents Act 2008 (the Act).

[2] The Tribunal will now determine the penalty.

## **BACKGROUND**

[3] The background narrative, as found by the Tribunal, is set out in the earlier decision and summarised below.

[4] Yankai Paul Pang was at the relevant time a licensed salesperson under the Act. He was contracted to the Orakei branch of Megan Jaffe Real Estate Ltd, trading as Ray White Orakei (the agency).

[5] The charges concerned a property (the property) owned by a vendor who lived overseas. Mr Pang dealt only with the vendor's daughter in Auckland, who did not have a power of attorney from her mother. Mr Pang obtained the vendor's digital signature and an initial from the daughter. In July 2021, he inserted the signature electronically onto the agency (listing) agreement and handwrote an initial for the vendor on each page. This included handwriting the initial against each of the "Client Acknowledgments". In July and August 2021, Mr Pang did the same on the property checklist, the Pre-Auction Offer-Vendor's Form, the Memorandum of Contract and on the Particulars and Conditions of Sale of Real Estate by Auction. The property was eventually withdrawn from sale.

[6] As a result of his conduct on this transaction, the agency terminated Mr Pang's employment contract in November 2021.

## **THE TRIBUNAL'S DECISION**

[7] Mr Pang did not attend the hearing so it proceeded as formal proof. In its decision of 8 January 2024, the Tribunal found that Mr Pang:

1. Had no direct contact with the vendor at any time.

2. Inserted the vendor's electronic signature and handwrote an initial on various agreements and property documents.

[8] It was found that Mr Pang had breached rr 5.1, 6.3, 9.6, 9.7, 12.2 and 12.3 of the Rules.<sup>1</sup> His conduct was wilful. It amounted to misconduct under s 73(c)(iii) of the Act.

## **PENALTY**

### *Jurisdiction and principles*

[9] The Tribunal's jurisdiction to impose penalty orders is set out in s 110(1) and (2) of the Act:

#### **110 Determination of charges and orders that may be made if charge proved**

- (1) If the Disciplinary Tribunal, after hearing any charge against a licensee, is satisfied that it has been proved on the balance of probabilities that the licensee has been guilty of misconduct, it may, if it thinks fit, make 1 or more of the orders specified in subsection (2).
- (2) The orders are as follows:
  - (a) 1 or more of the orders that can be made by a Committee under section 93 (except under section 93(1)(ha)):
  - (b) an order cancelling the licence of the licensee and, in the case of a licensee that is a company, also cancelling the licence of any officer of the company:
  - (c) an order suspending the licence of the licensee for a period not exceeding 24 months and, in the case of a licensee that is a company, also suspending the licence of any officer of the company for a period not exceeding 24 months:
  - (d) an order that a licensee not perform any supervisory functions until authorised by the Board to do so:
  - (e) an order, in the case of a licensee who is an employee or independent contractor, or former employee or former independent contractor, that any current employment or engagement of that person by a licensee be terminated and that no agent employ or engage that person in connection with real estate agency work:
  - (f) an order that a licensee who is an individual pay a fine not exceeding \$15,000 and order a licensee that is a company pay a fine not exceeding \$30,000:

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<sup>1</sup> These are set out at [38] of the Tribunal's decision of 8 January 2024.

- (g) where it appears to the Tribunal that any person has suffered loss by reason of the licensee's misconduct and the order is one that a court of competent jurisdiction could make in relation to a similar claim in accordance with principles of law, an order that the licensee pay to that person a sum by way of compensation as is specified in the order, being a sum not exceeding \$100,000.

...

[10] The Committee may make the following orders:

**93 Power of Committee to make orders**

- (1) If a Committee makes a determination under section 89(2)(b), the Committee may do 1 or more of the following:
  - (a) make an order censuring or reprimanding the licensee:
  - (b) order that all or some of the terms of an agreed settlement between the licensee and the complainant are to have effect, by consent, as all or part of a final determination of the complaint:
  - (c) order that the licensee apologise to the complainant:
  - (d) order that the licensee undergo training or education:
  - (e) order the licensee to reduce, cancel, or refund fees charged for work where that work is the subject of the complaint:
  - (f) order the licensee—
    - (i) to rectify, at his or her or its own expense, any error or omission; or
    - (ii) where it is not practicable to rectify the error or omission, to take steps to provide, at his or her or its own expense, relief, in whole or in part, from the consequences of the error or omission:
  - (g) order the licensee to pay to the Authority a fine not exceeding \$10,000 in the case of an individual or \$20,000 in the case of a company:
  - (h) order the licensee, or the agent for whom the person complained about works, to make his or her or its business (including any records, accounts, and assets) available for inspection or take advice in relation to management from persons specified in the order:
- ...
- (i) order the licensee to pay the complainant any costs or expenses incurred in respect of the inquiry, investigation, or hearing by the Committee
- (2) An order under this section may be made on and subject to any terms and conditions that the Committee thinks fit.

[11] In determining the appropriate penalty, it is relevant to note the purpose of the Act:

### **3 Purpose of Act**

- (1) The purpose of this 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.
- (2) The Act achieves its purpose by—
  - (a) regulating agents, branch managers, and salespersons:
  - (b) raising industry standards:
  - (c) providing accountability through a disciplinary process that is independent, transparent, and effective.

[12] The focus of professional disciplinary proceedings is not punishment, but the protection of the public:<sup>2</sup>

...It is well established that professional disciplinary proceedings are civil and not criminal in nature. That is because the purpose of statutory disciplinary proceedings for various occupations is not to punish the practitioner for misbehaviour, although it may have that effect, but to ensure that appropriate standards of conduct are maintained in the occupation concerned.

...

The purpose of disciplinary proceedings is materially different to that of a criminal trial. It is to ascertain whether a practitioner has met appropriate standards of conduct in the occupation concerned and what may be required to ensure that, in the public interest, such standards are met in the future. The protection of the public is the central focus.

...

Lord Diplock pointed out in *Ziderman v General Dental Council* that the purpose of disciplinary proceedings is to protect the public who may come to a practitioner and to maintain the high standards and good reputation of an honourable profession.

[13] Professional conduct schemes, with their attached compliance regimes, exist to maintain high standards of propriety and professional conduct not just for the public good, but also to protect the collective reputation and public confidence in the profession itself.<sup>3</sup>

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<sup>2</sup> *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] and [151].

<sup>3</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724–725 and 727; *Bolton v Law Society* [1994] 2 All ER 486 (EWCA) at 492; and *Z*, above n 2, at [151].

[14] While protection of the public and the profession is the focus, the issues of punishment and deterrence must also be taken into account in selecting the appropriate penalty.<sup>4</sup>

[15] The most appropriate penalty is that which:<sup>5</sup>

- (a) most appropriately protects the public and deters others;
- (b) facilitates the Tribunal's important role in setting professional standards;
- (c) punishes the practitioner;
- (d) allows for the rehabilitation of the practitioner;
- (e) promotes consistency with penalties in similar cases;
- (f) reflects the seriousness of the misconduct;
- (g) is the least restrictive penalty appropriate in the circumstances; and
- (h) looked at overall, is the penalty which is fair, reasonable and proportionate in the circumstances.

## SUBMISSIONS

### *Submissions of the Committee*

[16] In her submissions (2 February 2024), Ms Mok contends that public protection and the maintenance of proper professional standards (through deterrence) are important considerations, given the nature and gravity of Mr Pang's conduct. Rehabilitation is not the key focus, given his lack of engagement with the proceedings.

[17] Ms Mok submits that Mr Pang's offending was a serious example of misconduct. He was aware of his professional obligations at the time of offending and chose to ignore them. It was not an isolated error but spanned the time he worked on the transaction. His conduct involved a breach of fundamental rules, in that he had no direct communication with the vendor and he inserted signatures into contractual documents

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<sup>4</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at [28].

<sup>5</sup> *Liston v Director of Proceedings* [2018] NZHC 2981 at [34], citing *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354 at [44]–[51] and *Katamat v Professional Conduct Committee* [2012] NZHC 1633, [2013] NZAR 320 at [49].

without proper authorisation. Furthermore, he sought to cover up his wrongdoing in his communications with a supervisor.

[18] It is submitted that in previous cases involving dishonest and misleading conduct in respect of documents, cancellation will often be the appropriate start and end point.<sup>6</sup> The Committee is not aware of any personal factors concerning Mr Pang warranting a departure from cancellation. As for mitigating factors, aside from his lack of previous disciplinary history, Mr Pang's lack of meaningful engagement in the proceedings means there is no evidence as to whether he accepts full responsibility for his offending or that he has remorse or insight into his offending or any willingness to undertake rehabilitative steps. There lies a real risk that similar conduct might be engaged in again.

[19] Having regard to the serious nature and gravity of Mr Pang's misconduct and the limited personal mitigating factors, the Committee contends that censure and cancellation of his licence is the most appropriate outcome. Cancellation is necessary to ensure public protection and to maintain professional standards. As cancellation precludes a person from holding a licence for five years, the Committee does not seek an order prohibiting agencies from engaging him.

[20] Section 110A of the Act gives the Tribunal a discretion to award costs. The orthodox position is that a licensee who is found guilty of misconduct pays 50 per cent of the Committee's costs. It is submitted that it would be appropriate in this case for Mr Pang to make a contribution of 50 per cent. It is noted that Mr Pang has not filed any evidence as to his financial means which might indicate a reduction from 50 per cent.

[21] In further submissions (21 February 2024) in reply to those of Mr Pang, Ms Mok notes that Mr Pang continues to deny his failure to engage with the vendor, stating that she was well aware of what was happening. His various comments are inconsistent with the evidence before the Tribunal. He continues to deny responsibility for his misconduct and has not displayed true remorse or insight into his offending. While Mr Pang states that he is currently facing significant personal hardship, he has provided no documents to support this contention.

#### *Submissions of the defendant*

[22] In his email to the Tribunal (5 February 2024), Mr Pang apologises for not attending the hearing and because of a firewall in China, he could not respond in time.

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<sup>6</sup> *Prasad v Real Estate Agents Authority* [2020] NZHC 335; *Complaints Assessment Committee 2108 v Rankin* [2022] NZREADT 15; and *Complaints Assessment Committee 2102 v Hoogwerf* [2023] NZREADT 31.

He has encountered significant challenges in accessing Google Mail and promptly communicating. He made every effort to provide the evidence and to co-operate fully.

[23] Mr Pang says his intentions were to assist his friend, the “vendor” (presumably the vendor’s daughter), to sell her mother’s property. Unforeseen circumstances prevented him from meeting the mother in person. He admits copying and pasting her signature, which he now recognises as misconduct. His action did not result in any financial loss to any party. Both the vendor and the purchaser had explicitly stated that they did not hold him accountable for any wrongdoing. The parallels drawn by the Committee’s counsel to other decisions seems inappropriate to him.

[24] Mr Pang sincerely accepts the mistake he made and acknowledges the gravity of the situation. He takes full responsibility. However, he finds the request to cover 50 per cent of the costs to be unjustified. He provided all the evidence available to him. He disputes the claim that he lacked meaningful engagement as he co-operated and provided thorough details to the Committee. He is facing significant personal hardship. The financial strain resulting from the case led him to reconsider his career in the industry and to relocate to China. Accusations of dishonesty were deeply hurtful and his integrity was questioned without understanding his difficult circumstances.

[25] Mr Pang appeals for consideration of the penalty imposed and an understanding of the extenuating circumstances surrounding his actions. He is committed to rectifying his mistake and moving forward responsibly.

[26] On 21 February 2024, Mr Pang sent to the Tribunal his New Zealand bank account statements from 22 February 2022 until 15 February 2024. He submits that the accusations and penalties sought by the Committee are unreasonable and unfair.

[27] Mr Pang further states that Ms Mok’s comment that his submissions to the Tribunal are inconsistent with the evidence is a complete misunderstanding of the evidence. His intention was always to help the Tribunal deal with the case properly. He repeats that the vendor and buyer do not hold him responsible and suffered no financial loss, therefore the penalties should not be that serious.

[28] As for his financial situation, Mr Pang records that he has not performed any real estate activity for the last two to three years and has been living overseas for more than one year. The allegation that he is reconsidering his career in real estate is nonsense and groundless. His only income is from renting out a property, which covers the mortgage. He has to personally cover the council’s rates and property maintenance

fees. His daily living expenses in China are met by his parents. He has no money to cover the costs of the case and is facing significant financial hardship.

## DISCUSSION

[29] Mr Pang has been found guilty of misconduct. He wilfully contravened multiple professional obligations – rr 5.1, 6.3, 9.6, 9.7, 12.2 and 12.3 of the Rules. He had no direct contact with his client, the vendor. He personally inserted the client's signature and initial in numerous places on a number of critical transaction documents, without express authority from the client. He took instructions from the client's daughter who, to Mr Pang's knowledge, was not properly authorised by the vendor to do so. He then sought to cover up his wrongdoing when confronted by his employer.

[30] Mr Pang chose not to engage with the Tribunal until after the substantive (liability) decision had been issued. He had notice of the hearing and could have attended by audio-visual link, but he did not do so.<sup>7</sup> His belated explanation in his email on 5 February 2024 is not accepted. Nor is his claim that his intention was always to deal with the Tribunal properly.

[31] We agree with Ms Mok that the offending was a serious example of misconduct. It is a fundamental obligation of licensees to deal directly with their client or someone with a power of attorney from the client. It was not an isolated event, but it spanned the entire transaction. It was wilful. As a result of Mr Pang's failure to engage with the Tribunal, we do not accept his statement that he takes full responsibility. We cannot be confident he has learned from his wrongdoing and would not repeat it.

[32] Mr Pang is entitled to credit for his clean disciplinary history. We take into account his late apology, though note he made no apology to the Authority during the investigation of the complaint. He did, however, admit many of the facts underlining the charges from an early stage in the disciplinary process. There is no evidence that a party suffered any financial loss, though this does not mean that his misconduct is not serious. There are otherwise no mitigating factors.

[33] According to Mr Pang, he has serious financial difficulties. He has presented only limited evidence of his financial circumstances. Despite living in China, the only records produced are New Zealand bank statements which show modest income and balances.

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<sup>7</sup> See Mr Pang's email to the Tribunal on 16 November 2023.

### *Censure or reprimand*

[34] Only a censure would reflect the gravity of Mr Pang's wrongdoing and our condemnation of it.

### *Cancellation*

[35] Mr Pang's licence is voluntarily suspended until 2 August 2024. The Committee seeks cancellation of Mr Pang's licence on the basis of the serious nature of the misconduct and the lack of engagement by him in the Tribunal's process.

[36] It is important that licensees perform their professional duties with complete integrity, probity and trustworthiness. As noted above, we are not confident Mr Pang has learned a lesson or can be rehabilitated, despite the late promises in his recent submission. The protection of the public is an important consideration in this case. Having regard to the decisions cited by Ms Mok, particularly *Rankin*, it is appropriate to cancel Mr Pang's licence. Notwithstanding s 59(2) of the Act, the Tribunal's order of cancellation will take effect immediately.

### *Fine*

[37] The Committee does not seek a fine. Given the severe sanction of cancellation, it is not appropriate to additionally impose a fine.

### *Costs*

[38] The Tribunal may make any award of costs that it thinks fit.<sup>8</sup> It may take into account whether a party:<sup>9</sup>

1. Participated in good faith in the proceedings.
2. Facilitated or obstructed information gathering by the Tribunal.
3. Facilitated the resolution of the issues.

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<sup>8</sup> Real Estate Agents Act 2008, s 110A(1).

<sup>9</sup> Section 110A(2).

[39] The High Court has identified the relevant considerations relating to the award of costs in professional disciplinary cases:<sup>10</sup>

1. Professional groups should not be expected to bear all the costs of the disciplinary regime.
2. Members who appeared on charges should make a proper contribution towards costs.
3. Costs are not punitive.
4. The practitioner's means, if known, are to be considered.
5. A practitioner's defence should not be deterred by the risks of a costs order.
6. In a general way, 50 per cent of reasonable costs is a guide to an appropriate costs order subject to a discretion to adjust upwards or downwards.

[40] There is no reason in this case not to follow the practice of awarding the Committee 50 per cent of its costs. Mr Pang has not established the significant financial hardship claimed. He appears to own a property in New Zealand. The Committee's costs of \$17,040.30 (excl. GST and disbursements) are reasonable. The Committee will be awarded \$8,520. There are no factors which would justify an uplift or a reduction from the standard award of 50 per cent.

## ORDERS

[41] Mr Pang is:

1. Censured.
2. Ordered to pay the sum of \$8,520 to the Authority within one month of this decision.

[42] In addition, Mr Pang's licence is cancelled with immediate effect.

[43] 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.

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<sup>10</sup> *TSM v Professional Conduct Committee* [2015] NZHC 3063 at [21], citing *Vatsyayann v Professional Conduct Committee of New Zealand Medical Council* [2012] NZHC 1138 at [34]. Relied on by the Tribunal in numerous cases. See for example *Rankin*, above n 6, at [128].

**PUBLICATION**

[44] Having regard to the interests of the public in the transparency of the Tribunal and knowing of wrongdoing by licensees, it is appropriate to order publication of this decision naming the licensee and the agency.<sup>11</sup>

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D J Plunkett  
Chair

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G J Denley  
Member

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P N O'Connor  
Member

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<sup>11</sup> Real Estate Agents Act, s 108.