

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2020] NZREADT 16

READT 048/19

IN THE MATTER OF

An appeal under section 111 of the Real Estate Agents Act 2008

BETWEEN

STEPHEN BEATH
Appellant

AND

THE REAL ESTATE AGENTS
AUTHORITY (CAC 409)
First Respondent

AND

MIKE PERO REAL ESTATE LIMITED
Second Respondent

On the papers

Tribunal:

Hon P J Andrews, Chairperson
Ms C Sandelin, Member
Mr N O'Connor, Member

Submissions received from:

Mr Beath, Appellant
Mr M Mortimer, on behalf of the Authority
Mr A Darroch, on behalf of Mike Pero Real Estate Limited

Date of Decision:

20 April 2020

DECISION OF THE TRIBUNAL

Introduction

[1] On 31 August 2018, the Tribunal issued its decision on Mr Beath's appeal against the decision of Complaints Assessment Committee 409, dated 3 October 2017, in which the Committee found that Mike Pero Real Estate Ltd ("MPRE") had engaged in unsatisfactory conduct in its marketing of a property in Mount Victoria, Wellington.¹ The Tribunal directed that Mr Beath's complaint be referred back to the Committee for further investigation and consideration.

[2] The Committee issued a decision on 26 November 2019, in which it determined to take no further action against MPRE. Mr Beath has appealed against that decision.

[3] The parties have filed a joint memorandum, in which they seek orders that the appeal is allowed by consent, and that the Committee's decision is reversed and Mr Beath's complaint is remitted to the Committee for further consideration.

Submissions

[4] The parties submitted that as part of the Committee's re-investigation of Mr Beath's complaint, an investigator conducted an interview with Ms Cannon, who was, at the relevant time, a compliance manager at MPRE. A transcript of the interview was produced.

[5] On 6 March 2020, the Authority became aware that the transcript had inadvertently been omitted from the annexures to the investigation report. As a result, the transcript had not been provided to the parties for comment, and had not been provided to the Committee to be considered when making its decision.

[6] The parties agree that the transcript should be considered by the Committee, and that the appropriate course is for the matter to be remitted to the Committee so that the parties can make submissions on the transcript to the Committee, and the Committee can consider the transcript and the parties' submissions.

¹ *Beath v Real Estate Agents Authority (CAC 409)* [2018] NZREADT 45.

Decision

[7] We agree that the parties should be given the opportunity to make further submissions to the Committee, and that the Committee should reconsider Mr Beath's complaint against MPRE in the light of the transcript and the parties' submissions.

[8] Accordingly, by consent, the appeal is allowed and the matter is remitted to the Committee for further consideration.

[9] 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

Ms C Sandelin
Member

Mr N O'Connor
Member