

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2020] NZREADT 25

READT 056/18

IN THE MATTER OF

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

BROUGHT BY

COMPLAINTS ASSESSMENT
COMMITTEE 412

AGAINST

DAVID HILLIAM
Defendant

On the papers

Tribunal:

Hon P J Andrews (Chairperson)
Mr G Denley (Member)
Ms C Sandelin(Member)

Submissions filed by:

Mr M Mortimer, on behalf of the
Committee
Mr T Rea, on behalf of the Defendant

Date of Ruling:

16 June 2020

**RULING OF THE TRIBUNAL
(Recall and re-issue of decision)**

Introduction

[1] In a decision issued on 20 April 2020, the Tribunal found Mr Hilliam guilty of on a charge of misconduct laid by Complaints Assessment Committee 412.¹ The decision has not yet been sealed, and the parties have requested that it be recalled and re-issued to clarify the Tribunal’s direction as to the payment of compensation.

[2] The charge followed the Committee’s investigation of a complaint laid in respect of his conduct in the marketing and sale of a property at Waiuku, near Auckland. Mr Hilliam entered a plea of guilty to the charge, and the parties filed a detailed Agreed Summary of Facts in the Tribunal.

[3] The property was owned by Ms Herbst with her former partner, Mr Holmes, from whom she had separated. The Agreed Summary of Facts recorded that although Ms Herbst had filed the complaint, she and Mr Holmes were referred to as “the complainants”.

[4] In the penalty submissions on behalf of Mr Hilliam, it was recorded that Mr Hilliam had offered to pay compensation of \$10,000.

[5] At paragraph [58] of the decision, the Tribunal directed as follows:

[58] Further, as agreed by Mr Hilliam, we order as follows:

...

[b] Mr Hilliam is to pay the sum of \$10,000 to the complainants, within 20 working days of the date of this decision.

[6] The parties have sought clarification as to whether the compensation was to be paid to Ms Herbst, only, or to both her and Mr Holmes. The Tribunal requested submissions from counsel for the Committee and Mr Hilliam.

Submissions

[7] On behalf of the Committee, Mr Mortimer submitted that the payment of compensation should be made in equal parts to Ms Herbst and Mr Holmes, separately.

¹ *Complaints Assessment Committee 412 v Hilliam* [2020] NZREADT 18.

[8] Mr Mortimer submitted that a payment in equal shares of \$5,000 was appropriate for the following reasons:

- [a] Ms Herbst and Mr Holmes owned the property marketed by Mr Hilliam.
- [b] Notwithstanding the summary of facts, both Ms Herbst and Mr Holmes were named in the letter of complaint to the Real Estate Agents Authority that accompanied the complaint form.
- [c] The payment was offered by Mr Hilliam as “compensation to the Vendors”. Mr Mortimer submitted that the term “vendors” was used in contradistinction to “complainants”.
- [d] As Ms Herbst and Mr Holmes have separated, any payment should be made to them separately.
- [e] Mr Mortimer further submitted that the Committee is not aware of anything to suggest that Ms Herbst and Mr Holmes as vendors were not equally subject to the delays in settlement, failures to declare conflicts of interest, and the other conduct for which Mr Hilliam has accepted responsibility.

[9] Mr Rea advised the Tribunal that Mr Hilliam abides the decision of the Tribunal as to payment of compensation.

Ruling

[10] The Tribunal accepts that it is appropriate that its decision is recalled and re-issued in order to clarify the payment of compensation. The Tribunal also accepts the Committee’s submission that the payment of \$10,000 should be made to Ms Herbst and Mr Holmes, in equal shares.

[11] Accordingly, the Tribunal directs that the decision is recalled. Paragraph [58][b] is amended as follows:

Mr Hilliam is to pay the sum of \$10,000 to the complainants, within 20 working days of the date of the re-issue of this decision. The payment is to be made to Ms Herbst and Mr Holmes in equal shares of \$5,000.

[12] 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

Mr G Denley
Member

Ms C Sandelin
Member