

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2016] NZREADT 66

READT 025/13

IN THE MATTER OF Charges laid under s 91 of the Real Estate Agents Act 2008

BROUGHT BY COMPLAINTS ASSESSMENT COMMITTEE (CAC 20001)

AGAINST JANINE WALLACE
Defendant

Hearing: On the papers

Tribunal: Hon P Andrews (Chairperson)
Mr G Denley (Member)
Mr J Gaukrodger (Member)

Appearances: Ms C Paterson and Ms N Copeland for the Committee
Ms Wallace, in person

Date of Ruling: 28 September 2016

RULING OF THE TRIBUNAL

[1] On 21 May 2013 Complaints Assessment Committee 20001 (“the Committee”) laid a charge of misconduct against Ms Wallace under s 73(a) of the Real Estate Agents Act 2008 (“the Act”). Pursuant to s 73 (a) a licensee is guilty of misconduct if the licensee’s conduct “would reasonably be regarded by agents of good standing, or reasonable members of the public, as disgraceful”.

[2] On 22 September 2016 the Registrar of the Tribunal received the following email from Ms Wallace:

Please find enclosed my Medical Certificate dated 20 September 2016.

I have been ill for quite some time and unfortunately my health is not improving quite to the contrary.

I certainly want to address every single issue, there are many and also past decisions which were not correct.

My case needs professional representation and I must be able to be in a state of health to supply evidence and give directions.

I am of course unable to work in any way, so there is certainly no adverse effects to the RE Industry or any third party in that respect.

I have already suffered from "False Information" supplied previously in July 2016 from Meredith Connell to TVNZ which was broadcasted publically. This source was stated in a letter from TVNZ, which I presume is correct.

It is everyone's interest that these matters are dealt with in a professional, fair and honest manner.

Regards

Janine Wallace

[3] The email included a copy of a medical certificate dated 20 September 2016, as follows:

Janine Wallace was seen and examined by me on 20 September 2016 and in my opinion **Janine** has been medically unfit from 1 Sep 2016 and should be fit to resume work 1 December 2016.

Dr Richard Hill

[4] Although not submitted in proper form, Ms Wallace's email is assumed to be a further application to adjourn the hearing of the charges against her. The document submitted by Ms Wallace in support of the application is inadequate for the purpose of a request for an adjournment. It gives no details as to in what respect Ms Wallace is "medically unfit". For example, while stating that she "should be fit to resume work 1 December 2016", it gives no indication as to in what respect she is not able to attend a hearing in person or by counsel, or to instruct counsel, or to take any steps in respect of the hearing. Ms Wallace has previously been advised that a medical certificate provided by her was inadequate (in the Tribunal's Minute (2) dated 11 July 2016). The document provided with the latest request for an adjournment cannot be relied on by the Tribunal.

[5] Ms Wallace has chosen not to engage in the proceeding brought against her, except to make repeated requests to delay the hearing. She has not complied with any directions given by the Tribunal. While having made frequent references to her wish to engage counsel or, indeed, that she has instructed counsel who has been said

to be not able to deal with the matter until a certain time (which time has passed without any apparent action by such counsel), Ms Wallace has repeatedly failed to comply with directions that her counsel's name is to be entered on the record.

[6] A chronology of the history of the proceeding was annexed to the Tribunal's Minute (4) dated 23 August 2016. For ease of reference, a further chronology is annexed to this Ruling.

[7] In the Tribunal's Minute (3) dated 1 August 2016 leave was given to the Committee to add a second charge against Ms Wallace, founded on her conviction (following a guilty plea) and sentence on a charge of theft by a person in a special relationship contrary to ss 220 and 223(a) of the Crimes Act 1961. Leave was given. Pursuant to s 73(d) of the Act the Tribunal may make a finding of misconduct in respect of conduct which constitutes an offence on which the licensee has been convicted, and which reflects adversely on the licensee's fitness to be a licensee.

[8] In its Minute the Tribunal recorded the indication given by counsel for the Committee that upon leave being given in respect of the charge founded on Ms Wallace's conviction, leave would be sought to withdraw the original charge. The proceeding is now concerned only with the charge founded on the conviction.

[9] In the directions given in the Tribunal's Minute (4) the charge was set down for hearing on Wednesday 12 October 2016, at 10.00 am, at a venue to be advised. The hearing will be in Courtroom 8.1, Level 8, Auckland District Court, 65-69 Albert Street, Auckland. At paragraph [5] of Minute (4), the Tribunal advised that the hearing of the charge would proceed solely on the basis of Ms Wallace's conviction and sentence on the charge of theft by a person in a special relationship.

[10] Pursuant to s 47 of the Evidence Act 2006, proof that a person has been convicted of an offence is conclusive proof that the person has committed that offence. A certificate of conviction has been filed by counsel for the Committee.

[11] The Tribunal is satisfied that no further adjournments should be granted and if Ms Wallace does not appear at the hearing, the hearing will proceed in her absence,

by way of formal proof. In this regard, the Tribunal refers to s 105 of the Act, which provides that the Tribunal may regulate its procedures as it thinks fit, and to the principles set out in *Hart v Auckland Standards Committee of the New Zealand Law Society*¹ and *R v Hayward*.²

[12] The Tribunal has a discretion as to whether a hearing should take place in Ms Wallace's absence. In deciding whether the hearing of the charge against Ms Wallace will proceed by way of formal proof, should she not appear at the hearing, the Tribunal has taken into account her failure to engage in the proceeding (even to the extent of accepting service of documents and attending at purely procedural directions conferences), the delay that has already occurred by accommodating Ms Wallace's repeated requests for adjournments, her failure to provide any adequate reason for seeking yet a further adjournment, the fact that the charge against her will be conclusively proved by way of the certificate of conviction, and the Tribunal's lack of any confidence that she will engage in the proceeding at a later date.

[13] The Tribunal is satisfied that if she does not appear at the hearing of the charge against her, it should proceed in her absence, by way of formal proof. The Tribunal rules accordingly.

[14] Pursuant to s 113 of the Act, we record that any person affected by this decision may appeal against it to the High Court by virtue of s 116 of the Act.

Hon P J Andrews
Chairperson

John Gaukrodger
Member

Garry Denley
Member

¹ *Hart v Auckland Standards Committee of the New Zealand Law Society* [2013] 3 NZLR 103 (leave refused to appeal to the Court of Appeal: [2013] NZCA 673).

² *R v Hayward* [2001] EWCA Crim 168.

CHRONOLOGY: PROCEEDINGS AGAINST MS WALLACE

21 May 2013: Charge of misconduct under s 73(a) of the Real Estate Agents Act 2008 (disgraceful conduct) laid against Ms Wallace.

(Hearing of charge adjourned sine die on 16 September 2013 pending resolution of criminal charge against Ms Wallace under s 220 of the Crimes Act 1961.)

2016

3 February: Ms Wallace convicted and sentenced on charge of theft by person in a special relationship (following her guilty plea)

19 July: Authority applied to lay and additional charge against Ms Wallace

20 July: Process server attempted to serve Ms Wallace with

(a) 14.7.2016 Decision of CAC 411 to lay charge based on conviction and sentence on charge of theft on 3 February 2016), includes the charge dated 14 July 2016

(b) Memorandum of counsel for CAC 411 19 July 2016

(c) Certificate of conviction.

Service unsuccessful

25 July: Email Ms Copeland (on behalf of the Committee) to Ms Williams (3.10 pm): attaching corrected charging document. The email was copied to Ms Wallace, advising that she would be personally served when she returned from holiday.

25 July Email Ms Williams (Tribunal Registrar) to Ms Wallace (4.33 pm): Advises that directions conference adjourned to Monday 1 August 10.00 am

28 July: Email from Ms Wallace to Ms Williams (11.31 am): records received email and enclosed documents "which I was able to open up last night"; will forward documents to "my lawyer"

28 July: Email Ms Williams to Ms Wallace (12.06 pm): advises teleconference scheduled for 1 August 2016 will proceed

29 July: Process server again attempted service

Service unsuccessful

1 August: Teleconference (no attendance by Ms Wallace):

Minute (3): leave given for additional charge to be laid, teleconference otherwise adjourned to 8 August

2 August: Ms Copeland posted to Ms Wallace:

(a) Committee's decision to lay charge

(b) Amended charge

(c) Memorandum for CAC re amendment of charge

(d) Certificate of Conviction

- 8 August: Teleconference adjourned to 12 August because of another Tribunal hearing
- 11 August: Affidavit of service emailed to Tribunal, copied to Ms Wallace
- 11 August: Tribunal advised Ms Copeland, copied to Ms Wallace that teleconference adjourned to 19 August
- 19 August: Teleconference (no attendance by Ms Wallace)