

**BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

[2014] NZREADT 10

READT 024/12

**IN THE MATTER OF** charges laid under s.91 of the  
Real Estate Agents Act 2008

**BETWEEN** **REAL ESTATE AGENTS**  
**AUTHORITY (CAC 10054)**

Prosecutor

**AND** **WILLIAM HUME** of Wanganui,  
former salesperson

Defendant

**MEMBERS OF TRIBUNAL**

Judge P F Barber - Chairperson  
Mr G Denley - Member  
Ms N Dangen - Member

**SUBSTANTIVE DECISION ISSUED** 17 October 2013 as [2013] NZREADT 91

**DATE OF THIS PENALTY DECISION** (Heard on the papers) – 7 February 2014

**REPRESENTATION**

Mr L J Clancy, counsel for the Authority  
The defendant on his own behalf

**DECISION OF THE TRIBUNAL**

***Introduction***

[1] In our decision of 17 October 2013 ([2013] NZREADT 91, William Hume (“the defendant”) was found guilty of three charges of misconduct laid by the Authority (per Complaints Assessment Committee 10054) under ss.73(a), 73(c)(iii) and 73(d) of the Real Estate Agents Act 2008 (“the Act”).

[2] Counsel for the prosecution (Mr L J Clancy) submits that the appropriate penalty is cancellation of the defendant’s salesperson’s licence. We record that the defendant firmly declined to participate in this penalty process but represented himself and gave evidence at the substantive hearing.

**Charge 1**

[3] In our said 17 October 2013 decision we found, as a matter of fact, that Mr Hume:

- [a] Threatened Ms X, branch manager of X X Ltd;
- [b] Threatened Mr F, principal of X X Ltd;
- [c] Threatened and assaulted Mr W, director of X X Ltd;
- [d] Took property, including a \$20,000 deposit cheque, from X X Ltd.

[4] We determined that these incidents amounted to disgraceful conduct. Mr Clancy noted that the conduct relevant to charge 1 took place over a period of approximately two and a half years.

**Charge 2**

[5] This charge was found proved on the basis that the defendant wilfully or recklessly engaged in conduct that was likely to bring the industry into disrepute contrary to Rule 13.1 of the Rules of the Real Estate Institute of New Zealand and Rule 6.3 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009.

[6] The conduct relevant to charge 2 involved consumer clients.

[7] Between June 2007 and December 2008, while employed by X X Ltd, the defendant was the subject of three complaints and received three warnings from his employer about his conduct before being asked to leave.

[8] During the period November 2008 to December 2009, while employed by X X Ltd, the defendant was the subject of a further two complaints from clients. Further, he made unfounded allegations that his former employer had sexually harassed him and failed to present an offer to a client against the direct instructions of his employer.

**Charge 3**

[9] The defendant was found to have been convicted of an offence (threatening behaviour) which reflects adversely on his fitness to be a licensee. Mr Clancy noted that the threat, like those the subject of charge 1, was made against a former employer (Ms Q).

**Conduct Prior to the 2008 Act**

[10] The conduct alleged in this case spans a period before and after the 2008 Act came into force on 17 November 2009. Section 172 of 2008 Act therefore applies, as covered in our substantive decision herein of 17 October 2013.

[11] Section 172 limits any penalty that can be imposed for conduct pre-dating the 2008 Act to orders which could have been made under the Real Estate Agents Act 1976. For conduct after November 2009, the full range of penalty orders under the 2008 Act is available.

[12] In our substantive decision of 17 October 2013, we set out the charges in full. We agree with Mr Clancy that we need only consider the charges at 1.2 to 1.5 and 3 (that is, conduct after November 2009) in determining penalty. Charges 1.1 and 2 remain relevant as background (similar to the previous findings of unsatisfactory conduct discussed below). Mr Clancy submits for the prosecution/Authority that cancellation is appropriate based solely on the defendant's post November 2009 conduct.

### ***Penalty under the 2008 Act***

[13] Section 110(2) of the 2008 Act sets out the extensive orders which we may make following a finding of misconduct. Those include an order cancelling the licence of the licensee, an order suspending the licence of the licensee for a period not exceeding 24 months, and an order that a licensee who is an individual pay a fine not exceeding \$15,000.

### ***Discussion***

[14] The defendant has been found guilty of the following behaviour occurring after November 2009 (i.e. in terms of the 2008 Act):

- [a] Threatening to come over and “smash” a former employee (charge 1.2);
- [b] Threatening to kill two subsequent employers on two separate occasions (charges 1.4 and 3);
- [c] Assaulting a former employer by pushing or throwing him backwards on two occasions (charge 1.3(b));
- [d] Taking property from a former employer, including a deposit cheque for \$20,000, an open homes register and keys (charge 1.3(a));
- [e] Going to the offices of a former employer with his children and a sign reading “X stole \$30,000 from us”.

[15] The findings disclose a theme in the way the defendant conducts himself when challenged. He becomes angry, fails to control his temper and is highly confrontational and aggressive. Real estate work can be stressful and licensees must be able to be trusted to conduct themselves in a calm and professional manner to ensure that consumer interests and public confidence in the industry are promoted and protected. The threat to Mr F (charge 1.2) was witnessed by a consumer client.

[16] We dealt with somewhat similar concerns in the *Parlane v Registrar of the Real Estate Agents Authority* [2013] NZREADT 94 in the context of an application to review the Registrar's decision not to grant a licence to a person previously struck off as a solicitor. In declining the application for review, we noted:

*“[57] It is concerning that there are various correspondences and communications which display quite some belligerence on the part of the applicant. That would be an unfortunate trait in a real estate salesperson. Such persons might easily become embroiled in disputes with consumers, their principals, other agents, and members of the public. Many of the responses referred to above by the defendant, in terms of his problems with the Law*

*Society and clients, indicate that he reacts to issues belligerently and unprofessionally, and obsessively insists on what he regards as his rights.”*

[17] It is well established that decisions of disciplinary Tribunals should emphasise the maintenance of high standards and the protection of the public through specific and general deterrence. While this may result in orders having a punitive effect, this is not their purpose; *Z v CAC* [2009] 1 NZLR 2; *CAC v Walker* [2011] NZREADT 4.

[18] We accept that, given the risks to consumers inherent in the defendant's post 2009 conduct, and the need to uphold public confidence in the industry, the starting point penalty should be cancellation of the defendant's licence; but we regard that as a matter to be seriously considered before being applied. We must take into account the purposes of the 2008 Act. While some of our previous decisions relating to threatening behaviour by licensees have led to monetary penalties, those cases involved single incidents and not an extended pattern of behaviour such as in the defendant's case; refer *CAC v Subritzky* [2012] NZREADT 20; *CAC v Subritzky* [2012] NZREADT 19; and *CAC v Weldrand* [2013] NZREADT 78.

[19] When the background circumstances of the present case are considered, we feel that it is difficult to justify imposing any lesser penalty than the starting point of cancellation. We note the pre-November 2009 misconduct also found proved in the present case (charges 1.1 and 2), that the defendant has previous unsatisfactory findings against him, and that he no longer has a supportive employer willing to supervise him as we cover below.

[20] In 2011, the defendant faced previous misconduct charges brought by Complaints Assessment Committee 10036. We found that the appellant had breached the Rules in respect of two of the charges, but that this was not done wilfully or recklessly as alleged. We made findings of unsatisfactory conduct (*REAA v Hume* [2011] NZREADT 37) and imposed a fine of \$1,750.00.

[21] In a further disciplinary decision against the defendant, he was found to have engaged in unsatisfactory conduct by Complaints Assessment Committee 10054 for failing to properly explain a risk of liability for double commission to clients. Mr Hume appealed to us. We confirmed the Committee's finding and its penalty of a reprimand and fine of \$3,000; *Hume v REAA* [2013] NZREADT 53.

[22] In the present case, the defendant's then employer, Mr Hocquard of Ray White Whanganui, gave evidence in support of the defendant at the substantive hearing. An investigator from the Real Estate Agents Authority has recently spoken to Mr Hocquard and confirms that, since the substantive hearing of 17 October 2013, Mr Hume has left Mr Hocquard's employment by mutual consent. This was a result of Mr Hume "*not doing the job correctly*", "*in-house issues*" involving Mr Hume, and Mr Hocquard concluding that Mr Hume was "*bad for business*" given his deteriorating behaviour.

[23] Given this development and the defendant's lack of a supportive supervisor, the Authority now submits that the effect of penalty orders imposing further education and training would be difficult to monitor and would not sufficiently mitigate the risks to consumers and public confidence in the industry. We agree.

[24] It is submitted for the Authority/prosecution that the defendant's conduct after November 2009 warrants a starting point penalty of cancellation, in order to protect

consumers from the defendant's aggressive conduct and to promote public confidence in the industry. Again, we must agree.

[25] When background factors are considered including the misconduct pre-dating November 2009, the defendant's previous disciplinary history, and the fact that he no longer has the benefit of a supportive supervisor, we consider that there is no good reason to depart from the starting point of cancellation.

[26] We find that, in all the circumstances covered above, cancellation is the only penalty which adequately meets the purposes of the 2008 Act. Accordingly, we hereby cancel the defendant's licence as a real estate salesperson.

[27] 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.

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Judge P F Barber  
Chairperson

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Mr G Denley  
Member

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Ms N Dangen  
Member