

REA Case Summaries: 2024 Key Decisions

Introduction

This document outlines key cases determined by the New Zealand Real Estate Agents Disciplinary Tribunal and High Court in 2024 that provide important guidance to licensed salespersons, branch managers and agents as to their conduct obligations. The cases are not intended to be a comprehensive statement of the law, and the case summaries do not constitute legal advice and cannot be relied on as such. The Real Estate Authority encourages all licensees to undertake their own due diligence and seek their own legal advice.

Glossary of terms

For the avoidance of doubt, a glossary is provided for terms used in the below case summaries.

"The Committee (or a Committee)" means the Complaints Assessment Committee of the Real Estate Authority as defined in section 4 of the Real Estate Agents Act 2008.

"The Tribunal" means the New Zealand Real Estate Agents Disciplinary Tribunal as defined in section 4 of the Real Estate Agents Act 2008.

"The Act" means the Real Estate Agents Act 2008.

"The Rules" means the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012.

"The Audit Regulations" means the Real Estate Agents (Audit) Regulations 2009.

"The complainant" means the person who submitted a complaint to the Real Estate Authority.

"The applicant" means the person who filed an application for review in the New Zealand Real Estate Agents Disciplinary Tribunal.

"The Authority" means the Real Estate Authority.

"The licensee" licensee is a defined term in section 4 of the Real Estate Agents Act 2008 that means an agent, a branch manager or a salesperson. For the purposes of this document, it can also refer to a licensee who is the subject of the particular complaint referred to the Real Estate Authority.

"agent" means a real estate agent who holds, or is deemed to hold, a current licence as an agent under the Real Estate Agents Act 2008, as set out in section 4 of the Real Estate Agents Act 2008.

"branch manager" means a person who holds, or is deemed to hold, a current licence as a branch manager under the Real Estate Agents Act 2008, as set out in section 4 of the Real Estate Agents Act 2008.

"salesperson" means a person who hold, or is deemed to hold, a current licence as a salesperson under the Real Estate Agents Act 2008, as set out in section 4 of the Real Estate Agents Act 2008.

"The agency" means the company the licensee conducted their real estate work through and who is licensed under sections 36(3) and 44 of the Real Estate Agents Act 2008.

"The eligible officer" means the holder of an agent's licence in a company as set out in section 44(2) of the Real Estate Agents Act 2008.

"The Registrar" means an employee of the Real Estate Authority that is appointed by the Authority as the Registrar of the register of licensees, as set out in section 33 of the Real Estate Agents Act 2008.

"CPD" means continuing professional development as prescribed under the Real Estate Agents (Continuing Professional Development Rules) Notice 2018.

Disclosures should be made when vendors want to remove fixtures and chattels¹

1. This case concerned the sale of a property whereby the vendor told the licensee at the time of listing that they wanted to take the electric gate with them. The licensee did not disclose this to the purchaser or include reference to the fact that property would be sold without the gate in the sale and purchase agreement. After the sale and purchase agreement had been signed, the vendor also told the licensee that they intended to remove the shower wall in the bathroom. The licensee knew the shower wall had been removed at the time of the pre-settlement inspection but did not inform the purchaser. The Committee found that the licensee breached rule 5.1, 6.2 and 6.4 for these errors and made relief and rectification orders for the licensee to supply and replace the electric gate and shower wall at their own expense. It also ordered the licensee to undertake further training.
2. The licensee appealed the Committee's decision, stating that the purchaser had approved the removal of both the gate and shower wall, and argued that in any event the gate was a chattel and not a fixture, so the vendors were entitled to remove it. The licensee also pointed out that the property had been demolished by the purchaser, so they were no longer required to comply with the relief and rectification orders.
3. The Tribunal upheld the Committee's findings of unsatisfactory conduct and preferred the evidence of the purchaser that they were not informed of the gate and shower wall removal. The Tribunal also commented that it doubted that the gate was a chattel, but even if it was, it considered that the licensee should have expressly mentioned its removal in the sale agreement or at least informed the purchaser before signing that agreement.² The Tribunal was also critical of the licensee's failure to inform the purchaser of the shower wall removal at the pre-settlement inspection.³
4. However, the Tribunal modified the Committee's assessment of the seriousness of the licensee's conduct as low to middle unsatisfactory conduct on the basis that it considered that the licensee was careless and lacking skill rather than deceitful.⁴ It also found that on the information available to the Committee, the orders to replace the gate and shower wall were appropriate but noted that the Committee did not know that the property had been demolished when it made those orders. The Tribunal found that as the property had now been demolished, neither relief nor rectification was possible.⁵ Accordingly, the Tribunal dismissed the orders to replace the shower wall and gate but upheld the order for the licensee to undertake training.

¹ [Lemalu v REAA \(CAC 2205\) & Others \[2024\] NZREADT 44](#).

² Ibid at [51].

³ Ibid at [51].

⁴ Ibid at [57].

⁵ Ibid at [61].

The obligation to communicate directly with the client or a person holding a power of attorney is critical to the professional duties of a licensee⁶

5. This decision reinforces the fundamental obligation of licensees to deal directly with their client or someone with a power of attorney from the client. It also emphasises the obligation on licensees to perform their professional duties with complete integrity, probity and trustworthiness.
6. In this case, the Committee charged the licensee with misconduct under section 73(c)(iii) of the Act (wilful or reckless breach of the Rules) for acting in a transaction without having direct contact with the vendor and inserting the vendor's signature and initials on contractual documents. The Committee alleged the licensee breached rules 5.1, 6.3, 9.6, 9.7, 12.2 and 12.3 of the Code of Conduct.
7. The vendor's daughter approached the licensee to sell her mother's property. The vendor resided overseas in China. The vendor's daughter declined to give her mother's details to the licensee, claiming her mother was too busy and that her mother wanted the sale campaign to go through her daughter. The licensee obtained the vendor's electronic signature initials from the vendor's daughter, and he inserted the electronic signature onto various contractual documents, including the agency agreement. Additionally, the licensee inserted a copy of the vendor's initials written by him onto contractual documents because the vendor's initials supplied to him were blurry.
8. The licensee's then agency became aware of the licensee's conduct after an issue with a pre-auction offer and reported the licensee's conduct to the Authority. The agency said if it knew the licensee had inserted the vendor's electronic signature himself, or that the licensee was not taking instructions from the vendor directly, it would not have approved the listing. The Tribunal noted that the licensee misled the agency throughout the transaction by attempting to cover up his wrongdoing.
9. In response to the charges laid against him, the licensee said that he had explicit authority from the vendor to list her property and use her signature via the communications he had with the vendor's daughter, and that the vendor was always aware of everything related to the sale campaign through her daughter.
10. The Tribunal found the licensee had breached the Rules put forward by the Committee and decided his conduct was wilful. It therefore upheld the charge of misconduct under section 73(c)(iii) of the Act. In reaching its decision, the Tribunal found that the agency agreement was invalid because the appointment of the agency was done by the vendor's daughter, who had no legal authority to act on her mother's behalf.
11. The Tribunal stated:⁷

"The obligation to communicate directly with the client or a person holding a power of attorney is critical to the professional duties of a licensee. It is fundamental to the work of a licensee that there is a valid agency agreement and that the required advice is given to the client."

⁶ [CAC 2106 v Pang \[2024\] NZREADT 01](#)

⁷ Ibid at [47].

12. The Tribunal also found the licensee's conduct was wilful. There was evidence to show he initially questioned the authority of the vendor's daughter, knowing she did not have power of attorney, however the licensee failed to take things further by not insisting he spoke to the vendor directly to gain her authority.⁸
13. In its later penalty decision,⁹ the Tribunal agreed with the Committee's submissions that the licensee's conduct was a serious example of misconduct and noted that it is a fundamental obligation of licensees to deal directly with their client or someone with a power of attorney from the client. In deciding on penalty, the Tribunal also noted that the licensee's conduct was wilful and spanned the entire transaction. The licensee was censured, and his licence was cancelled. The licensee was also ordered to pay 50% of the Committee's costs.

Importance of ensuring that trust monies are correctly recorded and paid from the Agency's trust account¹⁰

14. This decision underlines the importance of ensuring that deposits of trust monies are correctly recorded in and paid from the Agency's trust account. It also reinforces the importance of ensuring the appropriate financial information is provided to auditors in accordance with the Audit Regulations.
15. In this case, the Agency admitted to a misconduct charge brought by the Committee under section 73(b) of the Act (serious negligent or seriously incompetent real estate agency work) by failing to meet the standards set out by section 122 of the Act and regulations 7, 14, 15, 16, and 17 of the Audit Regulations over three financial years. The Tribunal upheld the charge under section 73(b) of the Act.
16. The breaches set out in the agreed summary of facts were:
 - a. The Agency failed to hold money and only pay it to those persons entitled to it.
 - b. The Agency failed to ensure that the deposits of trust monies were correctly recorded in, or paid from, the trust account (this happened on eight separate occasions in one financial year and nine occasions in the following financial year).
 - c. At the end of one financial year, the trust account was calculated to be overdrawn, with the overdrawn amount being paid into the trust account by the Agency seven months later.
 - d. At the end of one financial year, the trust account was calculated to be in surplus due to a commission amount being held in the trust account in error (the amount was transferred out of the trust account one year later).
 - e. The Agency failed to provide its monthly reconciliations on time for a total of 27 months over 2020-2022. Some reconciliations were provided over a year late.
 - f. The Agency failed to provide its auditor a list of the trust accounts it operated during 2020-2022.

⁸ Ibid at [49].

⁹ [CAC 2106 v Pang \[2024\] NZREADT 05](#)

¹⁰ [CAC 2106 v City Realty Ltd \[2024\] NZREADT 12](#)

17. The Tribunal agreed with the Committee's submissions commenting that:¹¹

"[D]ue to the length, extent and seriousness of non-compliance, [the Agency's] conduct is at the higher end of misconduct under s 73(b) of the Act."

18. The Tribunal considered it was concerning that the offending continued even after the Agency received compliance advice from the Authority.¹² It also noted that, while the Agency faced staff issues and a changeover of the eligible officer, the Agency should have put in place measures to ensure that breaches it had been notified of did not continue to occur.¹³

19. The Tribunal decided to censure the Agency and ordered that it pay a \$15,000 to the Authority.

Commission sharing agreements with prospective purchasers and the fiduciary obligation of loyalty to vendors¹⁴

20. This decision reinforces the importance of disclosing commission sharing agreements with prospective purchasers to their vendor clients and licensees' fiduciary obligation of loyalty.

21. In this case, the licensee was charged with misconduct and unsatisfactory conduct for entering into a commission sharing agreement with a purchaser of the property, which the licensee failed to disclose to the vendors, creating a conflict of interest.¹⁵

22. The purchaser made a complaint to the Authority, alleging that he and the licensee formed an agreement to share the commission from the sale of the property and that licensee subsequently refused to split the commission. The complaint was referred to a committee, which then laid charges against the licensee in the Tribunal.

23. The Tribunal found that the licensee voluntarily and unequivocally entered into an agreement to share his commission with the purchaser unknown to his client, the vendors.¹⁶

24. The Tribunal was critical that the Licensee did so, stating:¹⁷

"The undisclosed sharing of commission with the purchaser is a breach of [the licensee's] fiduciary obligation of loyalty to the vendors. It does not matter that there were no financial implications for the vendors. It does not matter whether or not the arrangement was to [the licensee's] advantage. The vendors were entitled to know, at

¹¹ Ibid at [50].

¹² Ibid at [51].

¹³ Ibid at [52].

¹⁴ [CAC 2106 v Hu \[2024\] NZREADT 23](#).

¹⁵ More specifically, the licensee was charged under sections 73(a) (disgraceful conduct) and 73(c)(iii) (wilful contravention of the Act and/or rules), and in the alternative, unsatisfactory conduct under 72(b) (contravention of the Act and/or rules) and 72(d) (work regarded by agents of good standing as unacceptable) of the Act.

¹⁶ *Hu* at [158].

¹⁷ Ibid at [159].

the time they were presented with the offer of \$25.2 million, that their agent had divided royalties... this amounts to a breach of r 6.1 of the Rules."

25. The Tribunal also considered the licensee's conduct amounted to a breach of rule 6.3 of the Rules, as the acceptance of a commission sharing arrangement that was undisclosed to the client would tend to lower the standing and reputation of the industry and bring it into disrepute.¹⁸
26. The Tribunal concluded that, as it could not discount the licensee's version of events (that that he was constantly importuned by the purchaser who ultimately grabbed his phone to text the licensee's apparent agreement to the arrangement) the licensee's conduct did not reach the level of misconduct.¹⁹ However, the Tribunal upheld the charges of unsatisfactory conduct under section 72(b) (in contravention of the rules 6.1 and 6.3 of the Rules for breaching his fiduciary obligation to the vendors) and section 72(d) of the Act (work regarded by agents of good standing as unacceptable).
27. In the Tribunal's penalty decision,²⁰ the Tribunal ordered the licensee to be censured and to pay 50% of the Committee's costs.

Supervision policies must be effective and implemented consistently²¹

28. Under the Real Estate Agents Act, any individual holding a Salesperson class real estate licence must be properly supervised and managed when undertaking real estate agency work, and under r8.3 of the Code of Conduct agencies must ensure salespersons are properly supervised and managed.
29. In this case, a builder's report which identified weathertightness issues in a property had not been disclosed to the purchaser prior to the sale. The salesperson involved had minimal experience, and the Tribunal noted that there was a "gap" in the supervision system which meant that the existence of the builder's report was not brought to the attention of the agency's Branch Manager.²²
30. The agency admitted that its supervision policies and processes were inadequate in this case, in that they enabled a supervision failure to occur in respect of an inexperienced salesperson. The agency subsequently took steps to revise their management and supervision policies to avoid the situation being repeated including requiring written salesperson supervision plans.
31. The Tribunal acknowledged the steps the agency had taken and stated that they:

"would hope that with the implementation of these new policies, there will be closer scrutiny of inexperienced salespeople so that a situation like this will no longer arise".²³

¹⁸ Ibid at [160].

¹⁹ Ibid at [161].

²⁰ [CAC 2016 v Hu \[2024\] NZREADT 36.](#)

²¹ [CAC 2108 v Barfoot & Thompson Limited \[2024\] NZREADT 35.](#)

²² Ibid at [61].

²³ Ibid at [62].

32. The Tribunal upheld a charge of unsatisfactory conduct under s72(b) of the Act. The agency was censured and ordered to pay a fine of \$7,500 to the Authority.

Improper use of an agency's trust account involving and mismanagement of consumer funds is serious misconduct²⁴

33. This decision underlines the importance of appropriately managing consumer funds and the Agency's trust account in accordance with the REA Act and Audit Regulations.

34. In this case, the Committee charged the licensee with disgraceful conduct under section 73(a) of the Act, for numerous breaches of the Act and the Audit Regulations. The licensee admitted to the charge of misconduct and accepted the facts alleged.

35. The licensee had received customer and client money as an agent into a business account that was not a trust account and had drawn on that money to pay her own expenses. The account also became overdrawn, and the trust monies received in respect of particular transactions were not held in the account.

36. The Tribunal found that the licensee benefitted from the use of the trust monies held in her business account, as she used the trust monies for her own personal and business expenses. However, the Tribunal determined that there was no evidence of any intention to deprive any client of permanently of their funds. As such, the Tribunal found that the licensee's conduct could not be described as dishonest but noted that it was deliberate and intentional.²⁵

37. The Tribunal noted that client funds cannot be used for an agent's own purposes, but must be paid to the person entitled, or as directed by that person.²⁶ Further, the Tribunal considered it was implausible that the licensee was unaware of the requirement to keep client funds separate and in a designated trust account.²⁷

38. The Tribunal took into account the licensee's previous disciplinary history in ordering that the licensee be censured and pay 50% of the Committee's costs. It also ordered that she be prohibited from being employed or engaged to conduct real estate agency work for five years.

Misuse of Vendor Paid Advertising is a reckless contravention of professional obligations to clients²⁸

39. This decision outlines the importance of properly handling vendor paid advertising (VPA) money and reinforces the responsibility on supervisors and agents who operate as a business to adequately supervise their salespersons.

40. In this case vendors were not refunded for unspent marketing monies due to the way an agency accounted for VPA, and their salesperson's failure to appropriately track their VPA expenditure. This included incorrectly indicating on transaction reports that no refunds

²⁴ [CAC 2204 v Tafilipepe \[2024\] NZREADT 40](#).

²⁵ Ibid at [69] and [70].

²⁶ Ibid at [61].

²⁷ Ibid at [70].

²⁸ [CAC 2105 v Chen, Stevenson & Buy West Realty \[2024\] NZREADT 48](#)

were owed. In some circumstances, the salesperson inappropriately used VPA money to pay for other expenses, including personal costs and refunding VPA to different vendors. The licensee's supervisor and the agency were unaware of this activity.

41. The Tribunal found the salesperson guilty of misconduct under s 73(c)(iii) for recklessly contravening their obligations to their vendor clients. They were also found guilty of unsatisfactory conduct for their failure to provide a breakdown or itemisation of advertising and marketing costs.
42. The Tribunal found the licensee's supervisor and agency guilty of misconduct under s 73(b) for not having appropriate checks and balances in place to ensure that vendors were being refunded any unspent VPA. In addition, the Tribunal made a separate misconduct finding against both for supervision failings.
43. The Tribunal imposed a fine of \$10,000, a censure, and an order for training on the salesperson. The supervisor and the agency were fined \$7,500 each and censured, and ordered to repay in full, to vendors who were still owed marketing refunds. An order was also made that a 50% contribution to the committee's costs was to be split equally between the three parties.

High Court decision and REA guidance on compensation²⁹

44. This case was an appeal by the licensee against the Tribunal's decision that the Committee erred in declining to refer a complaint to the Tribunal for a compensation consideration under section 93(1)(ha) of the Act.
45. The appeal was heard by the High Court, who found that beyond considering whether the licensee's unsatisfactory conduct was minor or technical, the CAC has a limited residual discretion when deciding whether to make a compensation referral.³⁰
46. The Court noted that CACs "should only be filtering out [compensation] claims where it is abundantly clear ...that it is not the type of claim that the Tribunal should assess under s 110(5) [of the Act]".³¹ This means that a CAC may only decline to make a compensation referral in limited circumstances, such as where it does not fall within the language of sections 110(4) and (5) of the Act.³²
47. The High Court did not expand on the circumstances in which it would be "abundantly clear" that a claim is not one that the Tribunal should assess. However, it did acknowledge REA's submissions on the point.
48. REA considers that the circumstances include but are not limited to where:

²⁹ [Cho v REAA \(CAC 2108\) & X \[2024\] NZHC 2812](#). Please also see REA's [Case Summary on Compensation Referrals](#).

³⁰ *Cho* at [60].

³¹ *Ibid*.

³² Sections 110(4) & (5) of the REA Act state, amongst other things, that if it appears to the Tribunal that any person has suffered loss by reason of the licensee's unsatisfactory conduct, it may make an order that the licensee pay to that person a sum not exceeding \$100,000 by way of compensation if the order is one that a court of competent jurisdiction could make in relation to a similar claim in accordance with principles of law.

- a. a complainant does not seek compensation;
 - b. the complainant does not disclose any loss;
 - c. a complainant wrongly attached the label 'compensation' to something that could be remedied by other orders available to a CAC, for example costs incurred in respect of the inquiry or investigation by the CAC;
 - d. a complainant sought compensation only in respect of a point that the CAC had found was not established, such that the established unsatisfactory conduct does not lend itself (as a matter of jurisdiction) to any compensation; or e. a request for referral is plainly frivolous, vexatious, brought for an improper purpose or an abuse of process, such as because:
 - i. the complainant has already recovered their loss; (ii) the amount sought to be recovered is not more than de minimis or taking into account the facts of the particular case does not justify the use of the regulatory scheme to recover it.
 - ii. the amount sought to be recovered is not more than de minimis or taking into account the facts of the particular case does not justify the use of the regulatory scheme to recover it.
49. The list of situations provided above is non-exhaustive and is intended to assist anyone involved in the complaint process to better understand the compensation provisions under the Act. This is a developing area of the real estate regulatory regime. Regard should be had to Tribunal and court decisions following the Decision regarding the compensation referral power. These will provide further insight into the scope of CACs' powers when dealing with compensation claims made by complainants.