

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Boud Hammelburg (Applicant)  
**AND** Real Estate Institute of New Zealand Incorporated (Respondent)  
**REPRESENTATIVES** Anthony Drake, Advocate for Applicant  
Stephen Langton, Counsel for Respondent  
**MEMBER OF AUTHORITY** Marija Urlich  
**INVESTIGATION MEETING** 7 December 2005  
**DATE OF DETERMINATION** 12 December 2005

DETERMINATION OF THE AUTHORITY

**Employment relationship problem**

[1] Mr Hammelburg faces a disciplinary investigation by his employer, the Real Estate Institute of New Zealand (“REINZ”). Specific allegations have been put to Mr Hammelburg and he has been asked to attend a disciplinary meeting to provide a response to those allegations. He seeks a direction from the Authority that a document in REINZ’s possession, the Maguire report, be disclosed to him. Mr Hammelburg says he needs this document to enable him to fully and fairly respond to the allegations which have been put to him. Mr Hammelburg has lodged personal grievances in the Authority which relate to alleged unfairness in REINZ’s disciplinary process to date.

[2] REINZ says Mr Hammelburg has been provided with all the information it is obliged to provide in the context of the disciplinary investigation. It opposes providing the Maguire report on the basis that it is legally privileged and the Authority cannot order the disclosure of relevant documents other than in its investigation of an employment relationship problem.

[3] An urgent investigation meeting was convened to receive relevant evidence on this impasse between the parties. Closing submissions were filed the following day.

[4] The issues for the Authority to resolve are:

- (i) can the Authority direct the respondent to provide the Maguire report for the purposes of a disciplinary investigation?; and
- (ii) if so, can the Maguire report be disclosed?

[5] Section 160(1)(a) of the Act provides:

“(1) The Authority may, in investigating any matter,-  
(a) call for evidence and information from the parties or from any other person:  
...”

[6] For the purposes of the current issue before the Authority a copy of the Maguire report has been provided to the Authority. A copy of this document has also been provided to counsel for Mr Hammelburg, Mr Towner and Mr Porter, subject to undertakings.

[7] Mr Hammelburg seeks this document to, he says, respond fully to the disciplinary allegations he faces. Mr Hammelburg requests the Authority use its power to call for evidence pursuant to section 160(1)(a) for the purposes of ensuring the disciplinary process he is currently subject to is fair.

[8] Mr Hammelburg’s request goes beyond the Authority’s powers to call for evidence. The request, as it is currently framed, is not for the purposes of an Authority investigation but rather for the purposes of a disciplinary investigation. For this reason the Authority is unable to make orders requiring the discovery of the Maquire report. If the failure to provide the report occasions unfairness to Mr Hammelburg then a statutory remedy is available to him to pursue.

### **Costs**

[9] Costs are reserved. The parties should confer on this issue. If they are unable to resolve the matter they may apply to the Authority to determine this issue.

Marija Urlich  
Member of Employment Relations Authority