

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2012] NZREADT 37

READT 077/11

IN THE MATTER OF

charges laid under s.91 of the
Real Estate Agents Act 2008

BETWEEN

**THE REAL ESTATE AGENTS
AUTHORITY (CAC 10063)**

Prosecutor

AND

RAJNEEL RAJ

Defendant

MEMBERS OF TRIBUNAL

Judge P F Barber - Chairperson
Ms J Robson - Member
Mr J Gaukrodger - Member

HEARD at AUCKLAND on 20 June 2012

DATE OF THIS DECISION: 3 July 2012

REPRESENTATION

Mr L J Clancy, counsel for Prosecution/Authority
No appearance by Defendant

DECISION OF THE TRIBUNAL ON FORMAL PROOF

The Charges

[1] The defendant faces a number of charges of misconduct detailed below but, in general terms, for allegedly creating sales of real estate in a fraudulent manner with a view to his profit.

[2] The defendant did not appear at today's fixture (set for three days) which was made pursuant to an order of Ms K Davenport, Deputy Chairperson of this Tribunal, on 15 February 2012.

[3] By an earlier order of Ms Davenport of 22 November 2011, the case was to be heard by way of formal proof on 17 February 2012. However, due to communications after that from the defendant (Mr Raj) advising that he was seeking to find and fund a lawyer to represent him, a three day fixture was made to commence on 20 June 2012.

[4] In particular, on 15 February 2012. Ms Davenport ordered that the Interim Order of Suspension against the defendant was extended until the conclusion of the

hearing or such other date as ordered. We now extend that Interim Order of Suspension until such date as we deal with penalty pursuant to our decision below.

[5] Ms Davenport had also ordered on 15 February 2012 *“The Tribunal reminds Mr Raj that this charge will be dealt with on these dates whether or not he is present and whether or not he has managed to engage counsel. He may represent himself.”* Accordingly, we waited from 10.00 am on 20 June 2012 until 10.50 am in case the defendant appeared. We then allowed the prosecution to proceed by way of formal proof. As explained below, we indicated at the end of that hearing that we found all the charges proven but we would set out our reasons for decision within two or three weeks.

The Amended Charges

[6] By memorandum of 5 June 2012 the Authority, as prosecutor, filed amended charges which we now set out.

“1. Charges in relation to 13 Piper Place, Manukau (Piper Place property)

1.1 *Complaints Assessment Committee 10063 (Committee) charges the defendant with misconduct under s.73(a) of the Real Estate Agents Act 2008 (Act), in that his conduct would reasonably be regarded by agents of good standing or reasonable members of the public as disgraceful.*

Particulars:

- (a) *Making an agreement for sale and purchase document in respect of the Piper Place property, between Adlin Singh (aka Adlin Govind) as vendor and Leemo Saolotoga as purchaser, which falsely represented the purchase price of the Piper Place property payable by Leemo Saolotoga as \$634,000 when the true purchase price was \$569,000, for the purpose of deceiving the Bank of New Zealand into providing 100% finance for the purchase of the Piper Place property by Leemo Saolotoga.*
- (b) *Forging the signature and initials of Adlin Singh on an agreement for sale and purchase document between Helene Crompton as vendor and Adlin Singh as purchaser.*

1.2. *The Committee further charges the defendant with misconduct under s.73(c) of the Act in that his conduct consists of a wilful or reckless contravention of s.136 of the Act.*

Particulars:

- (a) *Not disclosing in writing (or at all) to Helene Crompton as vendor or Leemo Saolotoga as purchaser that he would be obtaining a financial benefit of \$62,000 from the purchaser of the Piper Place property by Adlin Singh from Helen Crompton for \$505,000 and on-sale to Leemo Saolotoga for \$569,000.*

2. Charges in relation to 14 Andover Way, Manukau (Andover Way property)

2.1 *The Committee further charges the defendant with misconduct under s.73(a) of the Act, in that his conduct would reasonably be regarded by agents of good standing or reasonable members of the public as disgraceful.*

Particulars:

- (a) *Making an agreement for sale and purchase document in respect of the Andover Way property, between Adlin Singh as vendor and Kilisimasi and Toreka Sega as purchasers, which falsely represented the purchase price of the Andover Way property payable by Kilisimasi and Toreka Sega as \$589,750 when the true purchase price was \$530,750, for the purpose of deceiving the Bank of New Zealand into providing 100% finance for the purchase of the Andover Way property by Kilisimasi and Toreka Sega.*
- (b) *Forging the signature and initials of Adlin Singh on agreement for sale and purchase documents between L and S Developments Limited as vendor and Adlin Singh as purchaser and between Adlin Singh as vendor and Kilisimasi and Toreka Sega as purchasers.*

2.2 *The Committee further charges the defendant with misconduct under s.73(c) of the Act in that his conduct consists of a wilful or reckless contravention of s.136 of the Act.*

Particulars:

- (a) *Not disclosing in writing (or at all) to L and S Developments Limited as vendor or Kilisimasi and Toreka Sega as purchasers that he would be obtaining a financial benefit of \$49,815.11 from the purchase of the Andover Way property by Adlin Singh from L and S Developments Limited for \$478,000 and on-sale to Kilisimasi and Toreka Sega for \$530,750.*

3. Charges in relation to 12 Ballance Avenue, Papatoetoe (Ballance Avenue property) and 60 Hain Avenue, Mangere East (Hain Avenue property)

3.1 *The Committee further charges the defendant with misconduct under s.73(a) of the Act, in that his conduct would reasonably be regarded by agents of good standing or reasonable members of the public as disgraceful.*

Particulars:

- (a) *Making an agreement for sale and purchase document in respect of the Hain Avenue property, between the defendant's mother, Urmila Devi, as vendor and Mark Dalangin and Mark Singzon as*

purchasers, which falsely represented the purchase price of Hain Avenue property payable by Mark Dalangin and Mark Singzon as \$394,000 when the true purchase price was \$370,000, for the purpose of deceiving the Bank of New Zealand into providing 100% finance for the purchase of the Hain Avenue property by Mark Dalangin and Mark Singzon.

3.2 The Committee further charges the defendant with misconduct under s.73(c) of the Act in that his conduct consists of a wilful or reckless contravention of s.136 of the Act.

Particulars:

(a) Not disclosing in writing (or at all) to Mark Dalangin as purchaser that he, or a related person, would be obtaining a financial benefit from the purchaser of the Hain Avenue property by the defendant's mother, Urmila Devi, from Chun Xia Ge and Jiang Yongtao for \$322,000 and on-sale to Mark Dalangin and Mark Singzon for approximately \$370,000.

3.2 The Committee further charges the defendant with misconduct under s.73(c) of the Act in that his conduct consist of a wilful or reckless contravention of rule 9.10 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009.

Particulars:

(a) Submitting two agreements for sale and purchase to Mark Dalangin and Mark Singzon for signature without all material particulars inserted or attached to the document.

3.3 The Committee further charges the defendant with misconduct under s.73(a) of the Act, in that his conduct would reasonably be regarded by agents of good standing or reasonable members of the public as disgraceful.

Particular:

(a) Inserting material particulars into agreements for sale and purchase in respect of the Hain Avenue property and/or the Ballance Avenue property for Mark Dalangin and Mark Singzon as purchasers, without their knowledge or consent.

3.5 The Committee further charges the defendant with misconduct under s.73(a) of the Act, in that his conduct would reasonably be regarded by agents of good standing or reasonable members of the public as disgraceful.

Particulars:

- (a) *Residing in the Ballance Avenue property without the knowledge or consent of owners Mark Dalangin and Mark Singzon.*

4. Charge in relation to 32 Mataroa Road, Mount Wellington (Mataroa Road property)

- 4.1 *The Committee further charges the defendant with misconduct under s.73(a) of the Act, in that his conduct would reasonably be disgraceful by agents of good standing or reasonable members of the public as disgraceful.*

Particulars:

- (a) *Making an agreement for sale and purchase document in respect of the Mataroa Road property, between the defendant's mother, Urmila Devi, as vendor and Marevil Porlares as purchaser, which falsely represented the purchase price of the Mataroa Road property payable by Marevil Porlares as \$310,000 when the true purchase price was \$274,500, for the purpose of deceiving the Bank of New Zealand into providing 100% finance for the purchase of the Mataroa Road property by Marevil Porlares.*
- 4.2 *The Committee further charges the defendant with misconduct under s.73(c) of the Act in that his conduct consists of a wilful or reckless contravention of s.136 of the Act.*

Particulars:

- (a) *Not disclosing in writing (or at all) to Marevil Porlares as purchaser that he, or a related person, would be obtaining a financial benefit from the purchase of the Mataroa Road property by the defendant's mother, Urmila Devi, from Chun Xia Ge for \$235,000 and on-sale to Marevil Porlares for approximately \$274,500.*

5. Charges in relation to 3/51 Henderson Valley Road, Henderson (Henderson Valley Road property)

- 5.1 *The Committee further charges the defendant with misconduct under s.73(a) of the Act, in that his conduct would reasonably be regarded by agents of good standing or reasonable members of the public as disgraceful.*

Particulars:

- (a) *Making an agreement for sale and purchase document in respect of the Henderson Valley Road property, between the defendant's mother, Urmila Devi, as vendor and Sudheer Reddy Vonteddu as purchaser, which falsely represented the purchase price of the Henderson Valley Road property payable by Sudheer Reddy*

Vonteddu as \$295,000 when the true purchase price was \$235,000, for the purpose of deceiving the Bank of New Zealand into providing 100% finance for the purchase of the Henderson Valley Road property by Sudheer Reddy Vonteddu.”

[7] The substantive changes to the original charges filed before this Tribunal are the addition of charges relating to two further properties, namely, 32 Mataroa Road, Mount Wellington and Apartment 3, 51 Henderson Valley Road, Henderson, which are now charges four and five. The new charges follow the same pattern as the original charges and allege misconduct under s.73(a) of the Real Estate Agents Act 2008 on the basis that the defendant made misleading sale and purchase agreements showing falsely inflated purchase prices in respect of the said two further properties for the purpose of inducing the Bank of New Zealand to advance 100% finance for the purchase of those properties.

[8] The allegations in respect of Mataroa Road and Henderson Valley Road properties are not new as they have been outlined in the 8 August 2011 affidavit of Ross Gouverneur, Senior Investigator of the Authority, filed in support of an application to suspend the defendant's licence. The transactions were raised by Mr Gouverneur with the defendant during a 14 July 2011 interview and a transcript of that interview has been adduced to us as Exhibit D to Mr Gouverneur's affidavit. The transactions in respect of the said two properties were not previously included in the charges brought by the Authority, because enquires into those transactions have been ongoing by the Committee.

[9] We agree with the submission of Mr Clancy for the Prosecution that, given the similarity of the new charges to the existing allegations and the early disclosure of the allegations through the application for interim suspension, there can be no prejudice to the defendant in the filing of the amended charges at this stage; and we hereby accept the five charges as framed above.

The Evidence

[10] On 20 June 2012 we heard formal evidence from Ms Leemo Saolotoga banker; Mr Adlin R Govind, payroll adviser; Mr Suresh Ganesh, manager, Mr Kilisimasi Sega, insurance agent, and Mr Ross Gouverneur, Senior Investigator of the Authority, all of Auckland, who covered matters in terms of their respective previous affidavits filed in this case. We have, of course, also studied affidavits from Helene Crompton, accountant, Mark Dalangin, Chun Xia Ge, company director, Marevil Porlares, and two affidavits from John McPhee, manager, and a signed brief of evidence of a Mr Bruce Irvine, also all of Auckland. We are well satisfied that such evidence is properly consistent with the summary of facts we now set out below.

Summary of Facts

Introduction

[11] The defendant, Rajneel Raj, held a salesperson's licence under the Real Estate Agents Act 2008 (Act) from 20 November 2009 until 31 August 2011, when his licence was suspended by the Tribunal on an interim basis.

[12] Between 20 November 2009 and 16 July 2011, Mr Raj worked for Kiwi Best Realty Limited trading as Re/Max Best (Henderson). During that period, Mr Raj facilitated real estate transactions involving six properties, to which the misconduct charges before the Tribunal relate.

[13] The six properties are:

- [a] Piper Place, Manukau (charge 1);
- [b] 14 Andover Way, Manukau (charge 2);
- [c] 12 Ballance Avenue, Papatoetoe (charge 3);
- [d] 60 Hain Avenue, Mangere East (charge 3);
- [e] 32 Mataroa Road, Mount Wellington (charge 4);
- [f] 3/51 Henderson Valley Road, Henderson (charge 5).

Basic Summary

[14] In outline, it is alleged that Mr Raj was involved in a fraudulent scheme for the financial benefit of himself and others. The scheme involved Mr Raj using a person connected to him to purchase a property from a genuine vendor and then immediately on-sell the property at a higher price to a genuine purchaser. On settlement, the difference between the original purchase price and the onsale price would be kept by Mr Raj or his associates.

[15] The ultimate purchasers involved had no deposit to purchase a property. Key to the scheme was that the purchasers were assisted in obtaining mortgages to fund their purchases by Mr Raj (a BNZ bank loans officer was also involved in the scheme). In order to deceive the mortgagee into lending sufficient funds to complete the purchase, Mr Raj created sale and purchase agreements showing falsely inflated purchase and deposit amounts, which were provided in support of loan applications.

[16] The scheme necessitated non-disclosure to both the genuine vendors and ultimate purchasers of the financial benefit that Mr Raj, or parties related to him, would receive when the transactions settled.

[17] Four of the six properties to which the charges relate were subject to this 'quick on-sale' scheme facilitated by Mr Raj. One of the properties (13 Piper Place) was subject to an attempted quick on-sale that did not settle. The final property (12 Ballance Ave) did not involve a quick on-sale but did involve a similar fraud on the bank and further dishonest behaviour.

[18] In total, Mr Raj, or persons associated with him, received at least \$189,000 profit from the four fraudulent on-sale transactions. In addition, Mr Raj claimed thousands of dollars in commissions on the transactions.

[19] Whilst other people were involved in the scheme, including the loans officer from BNZ, the focus of this summary is on Mr Raj's conduct.

13 Piper Place (charge 1)

[20] Mr Raj met Leemo Saolotoga and her husband in late 2010. Mr Raj had been recommended to Mrs Saolotoga by a BNZ loan officer named Vinod Rathore. It is noted Mr Rathore has since been suspended by BNZ and the bank is conducting an investigation into his conduct.

[21] In October 2010, Helene Crompton met Mr Raj. Ms Crompton and her husband were selling their property at 13 Piper Place, Goodwood Heights, privately. Mr Raj approached Ms Crompton and asked whether he could show a potential purchaser through her property. Ms Crompton agreed. Mr Raj never told Ms Crompton that he was a real estate agent.

[22] Mr Raj showed Mrs Saolotoga and her husband through Piper Place. Mrs Saolotoga liked the property. Mr Raj told her the purchase price would be \$570,000."

[23] On 18 October 2010, Mr Raj met with Mr and Mrs Saolotoga. He presented two sale and purchase agreements for Piper Place. The purchase price on both agreements was \$634,000 with a deposit of \$65,000. When they queried the purchase price (which Mr Raj had told them would be \$570,000), Mr Raj said that it was higher because the deposit of \$65,000 had been added to the purchase price. Mr and Mrs Saolotoga signed the agreement but Mr Raj did not give them a copy and there is no copy of the agreement available.

[24] After signing the agreement, Mr Raj attended a meeting at BNZ with Mr and Mrs Saolotoga and Mr Rathore. During the meeting, Mrs Saolotoga describes being very unsure because of the purchase price of \$634,000. Following the meeting, Mr Raj advised her that her mortgage for the property would be \$569,000.

[25] About this time, Mr Raj approached an acquaintance, Adlin Govind (nee Singh) and asked her to put her name on a property transaction to help someone he knew purchase a property. Mr Raj told her that she would need to receive some money into her bank account and that she could keep \$2,000 and pass the rest on to Mr Raj. Ms Govind agreed.

[26] Mr Raj intended to use Ms Govind as the 'middle person' to buy Piper Place and on-sell it at a significant profit to Mrs Saolotoga.

[27] A sale and purchase agreement dated 20 October 2010 records an agreement between Helene and James Crompton as vendors and Adlin Singh as purchaser for Piper Place.' The purchase price on the agreement is \$505,000 with a 5 percent deposit. No real estate agent is recorded on the agreement.

[28] During the Authority's investigation, Ms Govind was shown the sale and purchase agreement for Piper Place which shows her named as the purchaser. Ms Govind confirmed that the signature and initials on the agreement were not hers. The signatures on both agreements use Ms Govind 's married name, Singh, a name rarely used by Ms Govind.

[29] When interviewed by the Real Estate Agents Authority investigator, Ross Gouverneur, on 14 July 2011, Mr Raj admitted that he had written Ms Govind's Signature and initials on the Piper Place agreement.

[30] On 22 October 2010, Ms Saolotoga called Mr Raj and begged him to cancel the purchase of Piper Place. On 27 October 2010, Mrs Saolotoga recorded a conversation between herself, her husband and Mr Raj. During the conversation, Mrs Saolotoga asked Mr Raj to explain her purchase of Piper Place and the details of her finance application with BNZ. Mr Raj told Mr and Mrs Saolotoga that the way in which the transaction would work would involve showing the bank that Mr and Mrs Saolotoga had paid a 10% deposit when in fact the deposit was "not real money".

[31] Mr Raj went on to explain that the purchase price on the sale and purchase agreement was 10% higher than the true purchase price so that the purchasers could obtain a loan from the bank in the full amount of the true purchase price. During the conversation Mr Raj said:

"No, see the gifting will always be ... like I said, the minimum price and because there is no real money, there is no ... like In this scenario you will be giving me real 10% deposit. The second ... how you're buying now you are not giving me a 10% real deposit. So the minimum price plus the deposit, and that's fake deposit, that's not real money."

[32] Ms Crompton ultimately cancelled the agreement to sell Piper Place to Adlin Singh on the basis that the deposit that was due on the agreement going unconditional had not been paid: Accordingly, Mrs Saolotoga's agreement to purchase Piper Place did not settle.

14 Andover Way (charge 2)

[33] Mr Raj met Suresh Ganesh, a director of LS Property Developments limited, in late 2010. Mr Ganesh was in the property development industry and had subdivided a block of land in Goodwood Heights. The development was called "Wilisa Rise". Mr Raj was one of the agents contacted by Mr Ganesh to sell properties within the development.

[34] On 29 November 2010, IS Property Developments limited entered into an agreement, presented by Mr Raj, to sell a property at 14 Andover Way, Goodwood Heights.

[35] A sale and purchase agreement dated 19 November 2010 records an agreement between LS Developments Limited as vendor and Adlin Singh and/or nominee for Andover Way (14 Andover Way ASP 1). The purchase price was recorded as \$478,000 with a \$10,000 deposit. Re/Max Best was recorded on the first page as the agent for the sale. The final page of the agreement also recorded Re/Max Best as the agent for the sale, the salesperson being "Rajneel Raj".

[36] Mr Ganesh says that Mr Raj never told him that he was connected to the purchaser, Adlin Singh, or that he would personally benefit from any on-sale of Andover Way.

[37] Mr Raj met Kilisimasi Segal in late 2010. Mr Raj was recommended to Mr Segal by the BNZ bank loans officer involved in Mrs Saolotoga's attempted purchase of Piper Place, Vinod Rathore. Mr Raj showed Mr Segal the property at 14 Andover Way and Mr Segal decided to make an offer. On 24 November 2010, Mr Segal went to Mr Raj's office in Henderson. Mr Raj told Mr Segal that he could purchase Andover Way for \$530,750 and that this amount would be the same amount as his mortgage from BNZ.¹²

[38] Mr Segal recalls Mr Raj filling out a sale and purchase agreement in front of him and inserting a purchase price of \$570,000 before crossing that price out and writing \$589,750. Mr Raj also inserted a deposit of \$59,000 on the front page of the agreement. Mr Segal told Mr Raj that he did not have a deposit and Mr Raj never asked Mr Segal to pay a deposit." Mr Segal signed the agreement to purchase Andover Way. Mr Raj assured Mr Segal that the true purchase price of the property was \$530,750.

[39] A sale and purchase agreement dated 24 November 2010 records an agreement between Adlin Singh as vendor and Kilisimasi Segal and/or nominee as purchaser for Andover Way (14 Andover Way ASP 2). The purchase price was recorded as \$589,750 with a \$59,000 deposit payable on the agreement going unconditional. Settlement was due to take place on 2 December 2010. Re/Max Best was recorded on the first page as the agent for the sale. The final page of the agreement also recorded Re/Max Best as the agent for the sale.

[40] During the Authority's investigation, Ms Govind was shown the sale and purchase agreement for Andover Way which showed her named as the purchaser. Again, Ms Govind confirmed that the signature and Initials on the agreement were not hers." Whilst initially denying that he had forged Ms Govind's signature and initials, Mr Raj ultimately admitted that he had written Ms Govind's signature and initials on the Andover Way agreement.

[41] Ms Govind recalls Mr Raj directing her to go and see a solicitor about the transactions. Mr Raj drove Ms Govind to see the solicitor. On 6 December 2010, Ms Govind received a credit into her bank account in the amount of \$51,815.11 referenced as "14 Andoverbalancekashyap".

[42] Mr Raj told Ms Govind that she could keep \$2,000 of that sum and asked her to give him a bank cheque for the balance. On 8 December 2010, Ms Govind withdrew a cheque in Mr Raj's name for the amount of \$49,815.11.

[43] Mr Raj attended a meeting with Mr Rathore from BNZ and Mr Segal to discuss the details of the mortgage Mr Segal would get for his purchase of Andover Way.

[44] The title for Andover Way shows that on 7 December 2010, two transfers, first into the name of Adlin Govind, and second into the names of Kilisimasi Segal and Toreka Segal, occurred contemporaneously. BNZ registered its mortgage over the property at the same time.

[45] Mr Segal understood that he was purchasing Andover Way directly from the developer of the property. At no point did Mr Raj tell Mr Segal that he was purchasing

the property from Adlin Singh, who had entered into an agreement to buy the property for \$478,000 five days earlier.

[46] BNZ confirms that, in November 2010, the bank received a finance application in the name of Mr and Mrs Sega for the purchase of Andover Way. The bank received 14 Andover Way ASP 2 in support of the application (showing a purchase price of \$589,750) and accordingly lent Mr and Mrs Sega \$530,750.

[47] Unknown to the bank, the mortgage funds advanced represented 100% of the actual purchase price paid by Mr Sega, who paid no deposit. The difference between the \$530,750 paid by Mr Sega (14 Andover Way ASP 2) and the 478,000 paid to Mr Ganesh (14 Andover Way ASP 1) was the \$51,815.11 credited to Ms Govind's account, of which \$49,815.11 was paid to Mr Raj.

[48] During the interview with Mr Gouverneur, Mr Raj accepted that he received the bank cheque from Ms Govind for approximately \$49,000.

12 Ballance Avenue (charge 3)

[49] Soon after Mr Raj was granted his salespersons' licence in late 2009, he met Mark Dalangin. Mr Raj had been recommended to Mr Dalangin by a man called Prabahakar Roa who was helping Mr Dalangin and his partner, Mark Singzon, to look for an investment property to buy.

[50] In early 2010, Mr Raj and Mr Roa took Mr Dalangin to view about three properties in the Manukau area. One of the properties they viewed was 12 Ballance Avenue, Papatoetoe. Mr Dalangin decided to make an offer on this property.

[51] In mid-January 2010, Mr Raj met with Mr Dalangin and Mr Singzon to arrange the offer. Mr Raj produced two blank agreements for sale and purchase. He wrote Mr Dalangin and Mr Singzon's names as the purchasers on both agreements and then directed them to sign and initial both agreements.

[52] Mr Dalangin asked Mr Raj why they needed to sign two sale and purchase agreements, to which Mr Raj responded that he was still negotiating the price for the Ballance Ave property and he needed a spare agreement in case a mistake was made on the first agreement.

[53] In inviting Mr Dalangin and Mr Singzon to sign the blank sale and purchase agreements, Mr Raj disregarded his duty to ensure that all material particulars were inserted into the agreements before inviting signature. By obtaining the two blank signed sale and purchase agreements, Mr Raj was in fact able to facilitate the purchase of two separate properties, as described below.

[54] A sale and purchase agreement dated 19 January 2010 records an agreement between Vimlesh Ram as vendor and Mr Dalangin and Mr Singzon as purchasers for Ballance Avenue (12 Ballance Avenue ASP)." The purchase price was recorded as \$394,000 with a \$20,000 deposit payable to the vendor or the vendor's solicitor's account on the agreement going unconditional. Settlement was scheduled to take place on 3 February 2010, eleven working days after the date of the agreement. Re/Max Best was recorded on the first page as the agent for the sale. The final page

of the agreement also recorded Re/Max Best as the agent for the sale, the salesperson being recorded as 'J. Kashkari'.

[55] Mr Dalangin confirms that none of the material details on the 12 Ballance Ave ASP were recorded on either of the agreements presented by Mr Raj and signed by Mr Dalangin and Mr Singzon. The material details, including the vendor's name, the purchase price and the amount of the deposit were inserted after Mr Dalangin and Mr Singzon signed the agreements.

[56] Mr Dalangin recalls the transaction happening "really fast" and describes it as confusing." He says that Mr Raj contacted him and advised that a finance application to New Zealand Home Lending limited in both his name and Mr Singzon's name for the purchase of Ballance Ave had been declined. Mr Raj recommended that Mr Dalangin re-apply to the finance company in his name alone.

[57] Mr Dalangin's purchase of Ballance Ave settled. The title to Ballance Ave was transferred from Vimlesh Ram to Mr Dalangin on 5 February 2010 and New Zealand Home Lending Limited registered its mortgage over the property on the same day.

[58] The settlement statement for the purchase records a \$20,000 deposit being paid. Mr Dalangin confirms he never had to pay any deposit for Ballance Ave. The balance required from Mr Dalangin to settle the purchase is recorded as \$374,234.91.

[59] Mr Dalangin's solicitor's ledger records show that on 5 February 2010 New Zealand Home Loans advanced \$374,000 for Mr Dalangin's purchase.

[60] Mr Raj knew that Mr Dalangin and Mr Singzon did not have a deposit but he nevertheless entered false purchase price and deposit amounts onto the 12 Ballance Avenue ASP to give the mortgagee the impression that Mr Dalangin and Mr Singzon were contributing to the purchase of Ballance Ave and that the total purchase price was higher than the loan funds to be advanced. The purpose of the misrepresentation was to induce the mortgagee into unknowingly advancing 100% of the true purchase price.

12 Ballance Avenue rental

[61] After his purchase, Mr Dalangin wished to rent out the Ballance Avenue property. Mr Raj advised him that he did not need a tenancy agreement with the existing tenants and told Mr Dalangin that he would arrange for the tenants to pay rent directly into Mr Dalangin's account.

[62] Following a period during which the rent was not paid for two weeks, Mr Dalangin visited Ballance Ave and discovered that Mr Raj was living at the address. Mr Raj admitted that he had been living in Mr Dalangin's property with his girlfriend. Mr Dalangin never consented to Mr Raj living at 12 Ballance Avenue.

[63] Mr Raj's details on the Companies Office Register for Kiwi Best Realty Limited record Mr Raj's address as 12 Ballance Ave, as early as 2008, well before the sale to Mr Dalangin.

60 Hain Avenue (charge 3)

[64] Around the time of the settlement of the Ballance Avenue agreement, Mr Roa advised Mr Dalangin that he and his partner could afford to buy another property. Mr Roa and Mr Raj encouraged Mr Dalangin and Mr Singzon to purchase a second property at 60 Hain Avenue, Mangere. Mr Dalangin describes being worried about his financial situation around this time and confirms that he and his partner never made any decision to purchase Hain Ave.

[65] Despite never making a decision to buy Hain Ave, in early February 2010, Mr Roa told Mr Dalangin that he had in fact purchased that property. Mr Dalangin says that this was an enormous shock and he realised that one of the two agreements Mr Raj had directed him and his partner to sign, must have been used to purchase Hain Avenue.

[66] A sale and purchase agreement dated 4 February 2010 records an agreement between Urmila Devi as vendor and Mark Dalangin and Mark Singzon as purchasers for Hain Ave (60 Hain Avenue ASP 2). The purchase price was \$394,000 with a \$20,000 deposit payable on the agreement going unconditional. Settlement was due to take place two weeks from the date of the unconditional date or earlier by mutual consent. Re/Max Best was recorded on the first page as the agent for the sale. The final page of the agreement also recorded Re/Max Best as the agent for the sale, the salesperson being 'Rajneel Raj'.

[67] Mr Dalangin confirms that none of the material particulars on 60 Hain Avenue ASP 1 were recorded on either of the agreements presented by Mr Raj and signed by him and Mr Singzon. The material details, including the vendor's name, the purchase price and the amount of the deposit were inserted after Mr Dalangin and Mr Singzon signed the agreements.

[68] Mr Raj knew that Mr Dalangin and Mr Singzon did not have a deposit. By inserting the details onto 60 Hain Avenue ASP 2, not only was Mr Raj not acting in accordance with Mr Dalangin and Mr Singzon's instructions, he was again creating a falsely inflated sale and purchase agreement to misrepresent to the mortgagee on the purchase as to the purchase price and the contribution by the purchasers. Again, the purpose was to obtain 100% finance for the transaction.

[69] Mr Dalangin confirms he never had to pay any deposit for Hain Avenue. Mr Raj accompanied Mr Dalangin and Mr Singzon to a meeting at the Henderson branch of BNZ. Mr Dalangin describes Mr Raj answering a question from the banking advisor about the deposit by saying that the deposit had already been sorted out by their lawyer.

[70] The settlement statement issued by Frost & Sutcliffe Solicitors for the sale of Hain Ave records a deposit of \$24,000 being paid despite the agreement recording the deposit as \$20,000. The balance required from Mr Dalangin and Mr Singzon to settle the purchase was \$370,528.63.

[71] BNZ received a finance application in the names of Mr Dalangin and Mr Singzon for the purchase of Hain Ave. On the basis of the loan application, which

showed the purchase price as \$394,000 (supported by a copy of 60 Hain Avenue ASP 2), BNZ loaned Mr Dalangin and Mr Singzon \$370,000 to purchase Hain Ave.

[72] The title for Hain Ave shows that on 16 February 2010, two transfers, first from Chun Ge to Urmila Devi Santraj, and second to Mark Dalangin and Mark Singzon, occurred contemporaneously. BNZ registered its mortgage over the property at the same time.

[73] Mr Raj confirmed in his interview with the Authority that Urmila Devi Santraj (also known as Urmila Devi), the vendor on 60 Hain Avenue ASP 2, is his mother. Mr Raj also admitted that In respect of the on-sale of Hain Avenue to Mr Dalangin and Mr Singzon, he used his mother as the 'middle person' and that he never directly told Mr Dalangin that the vendor was his mother.

[74] Mr Dalangin confirms that Mr Raj never told him that he had purchased Hain Avenue from Mr Raj's mother or that anyone connected to Mr Raj would obtain a financial benefit from his purchase.

[75] On 29 January 2010, prior to the 60 Hain Avenue ASP 2 agreement being concluded, Urmila Devi had entered into an agreement to purchase Hain Avenue from the original vendors, Chun Ge and Jiang Yongtao, for \$322,000 (60 Hain Avenue ASP 1). The sale and purchase agreement records that a deposit of five percent of the purchase price was payable to First National, the agent recorded on the agreement. The agreement was conditional on the purchaser's due diligence within 4 working days. The final page of the agreement records Urmila Devi's contact details as Rajneel 021838628'.

[76] The difference in price between Urmila Devi's purchase of Hain Ave for \$322,000 (excluding rates and solicitor's fees) and on-sale to Mr Dalangin and Mr Singzon for the true purchase price of \$370,000 (excluding rates and solicitor's fees) was \$48,000.

[77] On 16 February 2010, Urmila Devi's solicitor paid Re/Max Best its commission on the sale of Hain Ave to Mr Dalangin and Mr Singzon in the amount of \$11,250. The balance after solicitors fees were deducted, was \$35,664.50.

[78] On 17 February 2010, Urmila Devi's solicitors drew a cheque In the amount of \$35,664.50 payable to 'Kiwi bank credit Urmila Devi'.

32 Mataroa Road (charge 4)

[79] Marevil Pore was introduced to Mr Raj by Prabhaker Kudumula. Mr Kudumula had suggested to Ms Porlares that it could be arranged for her to purchase properties to on-sell for a profit. One such property was 32 Mataroa Road.

[80] By an agreement dated 25 May 2010 (arranged by Mr Raj), Ms Porlares agreed to purchase 32 Mataroa Road from Urmila Devi for \$310,000 (32 Mataroa Road ASP 2). The agreement recorded a deposit of \$31,000 and the settlement date was to be two weeks from the date of the agreement. The agreement recorded that the sale was by Re/Max Best, salesperson 'Rajneel Raj'.

[81] A variation agreement of the same date adjusted the purchase price to \$305,000 and the deposit to \$30,500.

[82] Ms Porlares did not, in fact, have a deposit for the purchase of 32 Mataroa Road and Mr Raj was aware of this. Despite this, Mr Raj accompanied Ms Porlares to a meeting with a bank officer at BNZ in Henderson and completed paperwork for Ms Porlares' finance application.

[83] BNZ received a finance application in Ms Porlares' name in respect of the purchase of Mataroa Road. The application was supported by 32 Mataroa Road ASP 2 (and the variation), which showed a purchase price of \$305,000 with a deposit of \$30,500. The BNZ lent Ms Porlares \$274,500 towards her purchase.

[84] At the same time as arranging the purchase by Ms Porlares, Mr Raj was arranging the purchase of the property from the original vendor by his mother. By an agreement dated 25 May 2010, Chun Xia Ge agreed to sell 32 Mataroa Road to Urmila Devi (or nominee) for \$235,000 (32 Mataroa Road ASP 1). Settlement was to take place four weeks from acceptance of the contract. The purchaser's details were recorded as 'Rajneel 021 0478222'.

[85] The quick on-sale transaction settled on 16 June 2010. The BNZ mortgage advance to Ms Porlares was used to pay the \$274,548 required to settle Ms Porlares' purchase of the property from Urmila Devi. This amount (less legal fees and disbursements) was transferred to the solicitor's trust account for Ms Devi's purchase of the property and a commission of \$5,625 was paid to Re/Max Best.

[86] After \$235,048.04 was paid in settlement of Ms Devi's purchase, the balance of \$32,215 between the sale by Ms Devi (32 Mataroa Road ASP 2) and the purchase by Ms Devi (32 Mataroa Road ASP 1) was paid by bank cheque to Urmila Devi, Mr Raj's mother.

[87] Mr Raj did not disclose to Ms Porlares that he or a person related to him would benefit from her purchase of Mataroa Road.

[88] In interview with Mr Gouverneur, Mr Raj admitted that no deposit was paid in respect of Mataroa Road and that his mother knew little about the transaction, despite her name appearing as on-seller.

3/51 Henderson Valley Road

[89] By an agreement dated 8 June 2010 (arranged by Mr Raj), Sudheer Reddy Vonteddu agreed to purchase 3/51 Henderson Valley Road from Urmila Devi for \$295,000 (3/S1 Henderson Valley Road ASP 2). The agreement recorded a deposit of \$60,000 and the settlement date was to be two weeks from the unconditional date or earlier by mutual agreement. The agreement recorded that the sale was by Re/Max Best, salesperson "Rajneel Raj".

[90] BNZ received a finance application in the name of Sudheer Reddy Vonteddu for the purchase of Henderson Valley Road. The application was supported by 3/51 Henderson Valley Road ASP 2 showing a purchase price of \$295,000 with a

deposit of \$60,000. The BNZ lent Sudheer Reddy Vonteddu \$235,000 towards the purchase.

[91] At the same time as arranging the purchase by Sudheer Reddy Vonteddu, Mr Raj was (again) arranging the purchase of the property from the original vendor by his mother. By an agreement dated 5 June 2010, BPI limited agreed to sell 3/51 Henderson Valley Road to Urmila Devi (or nominee) for \$154,000 (3/S1 Henderson Valley Road ASP 1). The settlement date was to be two weeks from the unconditional date or earlier by mutual agreement.

[92] The quick on-sale transaction settled on 17 June 2010. The BNZ mortgage advance to Sudheer Reddy Vonteddu was used to pay the \$274,548 required to settle Sudheer Reddy Vonteddu's purchase of the property from Urmila Devi. This amount (less legal fees and disbursements) was transferred to the solicitor's trust account for Ms Devi's purchase of the property and a commission of \$5,625 was paid to Re/Max Best.

[93] After \$154,174.82 was paid in settlement of Ms Devi's purchase, the balance of \$73,724 between the sale by Ms Devi (3/51 Henderson Valley Road ASP 2) and the purchase by Ms Devi (3/51 Henderson Valley Road ASP 1) was (again) paid by bank cheque to Urmila Devi, Mr Raj's mother.

Conclusion from Above Summary of Facts

[94] In 2010, Mr Raj arranged for the purchase and subsequent on-sale of four properties, by people connected to him, to third parties. The transactions were facilitated by fraudulent applications for finance supported by sale and purchase agreements showing falsely inflated purchase and deposit amounts. The sale and purchase agreements were prepared by Mr Raj. A further similar transaction failed to settle.

[95] The profit to Mr Raj and persons associated with him from the quick on-sale transactions was at least \$189,000. In addition Mr Raj claimed thousands of dollars in commission payments on the transactions.

[96] Contrary to s.136 of the Act, Mr Raj failed to disclose to parties to the transactions that he, or a related person, would be obtaining a financial benefit from the transactions.

[97] Further, Mr Raj forged signatures and initials for a party to two of the transactions and, in respect of a third, had his client signed two blank sale and purchase agreements, one of which was then used to facilitate a transaction without the client's knowledge.

Discussion

[98] The defendant, Rajneel Raj faces six charges alleging misconduct contrary to s.73 of the Act. We find him guilty of all charges. The evidence of the prosecution is unchallenged and we accept it.

[99] The defendant held a certificate of approval as a salesperson under the Real Estate Agents Act 1976 from 2004 and a salesperson's licence under the Act from 20 November 2009 until 2 September 2011, when his licence was suspended by the Tribunal pending resolution of the charges.

[100] The defendant's certificate of approval under the 1976 Act was suspended for two years from 20 November 2007, following an application to the Real Estate Agents Licensing Board by the Real Estate Institute of New Zealand. In that case, the Board found that the defendant, Mr Raj, had deliberately breached ss.63 and 64 of the 1976 Act by disguising sales from clients to persons related to him. The case before the Board also involved the on-sale of property acquired by the defendant's family.

[101] Although a full summary of facts is set out above, in outline, while working as a salesperson for Re/Max Best Henderson during 2010, the defendant arranged for the purchase and subsequent on-sale of four properties listed with him, by people connected to him, to third parties. The on-sale transactions were in respect of:

- [a] 14 Andover Way, Manukau (charge 2);
- [b] 60 Hain Avenue, Mangere East (charge 3);
- [c] 32 Mataroa Road, Mount Wellington (charge 4);
- [d] 3/51 Henderson Valley Road, Henderson (charge 5).

[102] The transactions were facilitated by fraudulent applications for finance supported by sale and purchase agreements showing falsely inflated purchase and deposit amounts for the on-sale transactions. The sale and purchase agreements were prepared by the defendant.

[103] A fifth similar transaction failed to settle: namely, regarding 13 Piper Place, Manukau (charge 1).

[104] The profit to the defendant and persons associated with him from the quick on-sale transactions was at least \$189,000. In addition, the defendant claimed thousands of dollars in commission payments in respect of the transactions.

[105] Contrary to s.136 of the Act, the defendant failed to disclose to parties to the transactions that he, or a related person, would be obtaining a financial benefit from the transactions (charges 1.2(1), 2.2(a), 3.2(a) and 4.2(a)).

[106] Further, the defendant forged signatures and initials for a party to two of the transactions (charges 1.1(b), 2.1(b)) and, in respect of a third, had his client sign two blank sale and purchase agreements, one of which was then used to facilitate a transaction without the client's knowledge (charges 3.3(a) and 3.4(a)).

Misconduct

[107] The offences of the defendant comprise misconduct under s.73 of the Act and involve disgraceful conduct contrary to s.73(a) (charges 1.1, 2.1, 3.1, 3.4, 3.5, 4.1

and 5.1), wilful or reckless breach of s.136 of the Act (charges 1.2, 2.2, 3.2 and 4.2) contrary to s.73(c), and wilful or reckless contravention of r.9.10 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009 (charge 3.3), also contrary to s.73(c) of the Act.

Section 73(a) – Disgraceful conduct

[108] The concept of disgraceful conduct under s.73(a) was discussed by the Tribunal in *CAC v Downtown Apartments Limited and Anor* [2010] NZREADT 6 at [49] to [59]. The Tribunal's analysis of s.73(a) in *Downtown Apartments* has been subsequently applied in a number of cases, including in the recent decision *CAC v Lum-On* [2010] NZREADT 30.

[109] In outline, the Tribunal has held that s.73 will require a marked or serious departure from acceptable standards. The word disgraceful is not a term of art and is to be given its normal meaning. Whether conduct is disgraceful will be an objective question for the Tribunal to assess and, in doing so, the Tribunal can take into account any special knowledge, skill or training that an agent of good standing is expected to possess.

[110] Because we have found the factual allegations proved on the balance of probabilities, it follows that the defendant's conduct was disgraceful and we so find. The defendant has participated in a dishonest scheme involving forgery and deliberate misrepresentations to mortgagees and others, all done for significant financial benefit. We consider that the defendant's offences are of the most serious kind likely to come before the Tribunal.

Section 73(c) – Wilful or reckless breach of s.136

[111] Section 136 provides:

“(1) A licensee who carries out real estate agency work in respect of a transaction must disclose in writing to every prospective party to the transaction whether or not the licensee, or any person related to the licensee, may benefit financially from the transaction.”

[112] A person “related to the licensee” is defined at s.137(2)(h) to include any parent of a licensee. From the above facts, it follows that the defendant wilfully or recklessly breached his duties under s.136. We so find.

[113] The defendant made (or stood to make) significant profits on the four transactions in respect of which disclosure was not made, including \$49,815.11 on the 14 Andover Way transaction alone. These profits were in addition to significant commission payments claimed (for example, \$5,625 in respect of 32 Mataroa Road.

[114] It is also relevant that the defendant was well aware of his duties regarding related party transactions given his suspension in 2007 for similar conduct.

[115] Non-disclosure of financial benefit was a deliberate part of the fraudulent scheme operated by the defendant. That scheme depended on the original vendors believing that the sale to the “middle man” (that is, Adlin Singh or Urmila Devi) was

genuine and the ultimate purchasers believing that their purchase from that same middle-man was genuine. Key to the scheme was disguising the fact that the middle-man was, in fact, closely connected to the defendant, Mr Raj, and that Mr Raj would benefit from a significant profit made on the on-sale.

Section 73(c) – Wilful or reckless breach of r.9.10

[116] Rule 9.10 provides:

“A licensee must not submit an agency agreement or a sale and purchase agreement or other contractual document to any person for signature unless all material particulars have been inserted into or attached to the document.”

[117] The defendant’s breach of r.9.10 is extremely serious. Mr Raj invited clients to sign two blank sale and purchase agreements and then used one of those agreements to facilitate the purchase of a property (60 Hain Avenue) without the knowledge of his clients.

[118] It must follow that the breach of the rules was wilful or reckless. Profit from the on-sale of Hain Avenue was \$35,664.50, paid to the defendant’s mother, Urmila Devi. Mr Raj offered no explanation to his client, Mark Dalagin, as to why the sale and purchase agreement he had signed was used to set up the purchase against his instructions.

Outcome

[119] We find all the charges proven certainly to the standard of the balance of probabilities as required by s.110 of the Act but also (were it necessary, which it is not) beyond all reasonable doubt. Accordingly, this situation is disturbing in terms of the aims and objects of the Act as set out in s.3(1) of the Act namely:

“To promote and protect the interests of consumers in respect of transactions that relate to real estate and to promote public confidence in the performance of real estate agency work.”

[120] Under s.3(2) that is to be achieved by, inter alia, regulating salespersons, raising industry standards, and providing accountability through a disciplinary process that is independent, transparent, and effective. Accordingly we need to now move to the question of penalty.

[121] We agree with Mr Clancy, for the prosecution, that the issue of penalty needs to be considered separately, and we direct the Registrar to arrange a hearing for submissions, and probably evidence, on the issue of an appropriate penalty package to be imposed on the defendant. We are conscious that we must afford the parties to any and all of the said transactions the opportunity to submit evidence of any loss caused by the defendant’s conduct so that we can consider orders for compensation under s.110(2) (g). We record that Mr Clancy, very helpfully, has undertaken to provide a copy of this decision to all seemingly affected parties and advise them of our willingness to hear evidence and submissions from them, or on their behalf, in relation to their allegations of perceived loss.

[122] Also, we are conscious, of course, that while the defendant has allowed this fixture to proceed by formal proof in his absence, we believe that he still resides within the jurisdiction and he must be given the chance to call evidence and/or make submissions on penalty and related issues himself.

[123] We observe that as the misconduct which we have found proven occurred after the commencement of the 2008 Act, a wide range of Orders is potentially available to us under s.110 of the Act.

[124] We note that Mr Clancy made the point at the end of the hearing that he will file and serve further submissions on the issue of penalty but, at this stage, he submits that, given the seriousness of the charges and the defendant's disciplinary history, no order less than cancellation of the defendant's licence is likely to be appropriate. That is an understandable submission. Indeed, we shall need to give serious thought to recommending that, in the public interest, the defendant should never again hold any position of trust. It follows that as well as s.110(2)(b) (cancellation of licence) we need to also consider subs.(d) and (e) of s.110(2) in terms of the defendant never engaging in any aspect of real estate work. Of course, other penalty provisions of ss.93 and 110 need to be carefully considered by us when submissions on penalty have been made.

[125] It has been observed that this case shows that the regime prior to the 2008 Act could not prevent serious re-offending by this defendant.

[126] Accordingly, we leave it to the Registrar to arrange a convenient date for submissions on penalty and compensation and any other related matters.

Judge P F Barber
Chairperson

Ms J Robson
Member

Mr J Gaukrodger
Member