Decision No: [2013] NZREADT 48

Reference No: READT 035/11 and READT 046/11

IN THE MATTER OF	charges laid under s.91 of the Real Estate Agents Act 2008
BETWEEN	**REAL ESTATE AGENTS AUTHORITY (CAC 10050)**
AND	**DAPHNE BROWN**
	Defendant
AND	
IN THE MATTER OF	an appeal under s.112 of the Real Estate Agents Act 2008
BETWEEN	**DAPHNE BROWN**
	Appellant
AND	**REAL ESTATE AGENTS AUTHORITY (CAC 10050)**
	First respondent
AND	**MARY WEALLEANS**
	Second respondent

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

Ms K Davenport QC - Chairperson
Mr G Denley - Member
Mr J Gaukrodger - Member

APPEARANCES

Mr M Hodge for the Complaints Assessment Committee (the Real Estate Agents Authority) [Meredith Connell Solicitors]
Mr P Spring and Ms Hyde for Mrs Brown [Keegan Alexander, Solicitors]

HEARD at AUCKLAND on 19 – 21 March 2013

Introduction

[1] This case involves a marketing scheme put together by L J Hooker [trading as City Investments Services Limited (CISL)] in 2006. The scheme was designed to facilitate the sale of apartments in Auckland's CBD. In late 2006 CISL sold an apartment in the Zest building to Mr and Mrs Wealleans, the complainants. That apartment is now worth significantly less than the price paid by the Wealleans. The case arises out of the way in which the marketing of this apartment was conducted by CISL. The facts are relatively straight forward and other than some differences in emphasis are not essentially in dispute. However the legal effect and/or consequences of those facts are at the heart of the dispute.

Mrs Brown faces two charges.

Charge 1:
Mrs Brown is charged with misconduct under s 73(b) - that her conduct constitutes seriously incompetent or seriously negligent in real estate agency work.

Particulars:
As principal officer of City Investment Services Limited (CISL), permitting CISL to market the property through its salespersons and/or in its promotional and marketing materials, in a manner which created the impression that CISL was acting in the complainant's interests in her purchase of Apartment 933, 72–78 Nelson Street, Auckland, when CISL's duty as agent for the vendor of the property, the Conrad Nelson Street Trust, was to act in the interests of the Trust.

Charge 2:
Mrs Brown was charged with misconduct under s 73 of the Act in that her conduct constitutes seriously incompetent or seriously negligent real estate agency work.

Particulars:
As principal officer of CISL, permitting CISL, through its salespersons and/or promotional and marketing materials, to provide misleading information to the complainant in the marketing of the property.

(a) The statement in CISL's promotional materials that:

> *"Currently we're experiencing a buoyant property market in Auckland. All the indications are that this is not likely to change now or in the future. The best time to invest is NOW".*

(b) The projected property value figures in CISL's "*Property Investment Analysis (Descriptive)*" document dated 16 December 2006 showing a progressive increase in the value of the property.

(c) The advice of CISL's salesperson, Richard Phelan, that the complainant could expect a return of about $70,000 on the property in three to five years.

The Facts

[2] In 2006 Mr and Mrs Wealleans were aged 56 and 58 years old respectively. Mrs Wealleans is a teller at the BNZ bank and Mr Wealleans has been a truck driver for 46 years.

[3] In November 2006 Mrs Wealleans received a telemarketing call and agreed to go to an investment seminar run by L J Hooker in Hamilton. The Tribunal have a copy of the brochure that she received at the seminar. This emphasised the desirability of investing in property but did not stress any particular property, although there was an emphasis on properties in Auckland and the Auckland Central Business District in particular. At the end of the seminar, Mrs Wealleans was asked if she wanted to make a further appointment for a home visit. She made one for the next night, 17 November 2006. At that time Mr Phelan from CISL came to her house and met her husband and talked through the options for investing. Mr Phelan completed a workbook with the Wealleans and sought information about their current property (the house in Hamilton), their mortgage, their earning ability, their outgoings and discussed the pros and cons of investing in various types of investment. The workbook shows that Mr Phelan stressed property as being the best investment for them.

[4] Mrs Wealleans said that whilst Mr Phelan told her that property was a long-term investment he also said that if they wanted to sell the property within 2 to 3 years (or within the short-term) then the property market was rising and they would make a small profit. Mrs Wealleans said that Mr Phelan did not mention any property in particular but stressed investment apartments in the Auckland CBD.

[5] After this meeting Mr and Mrs Wealleans agreed to come to Auckland to make an appointment to see actual apartments which were for sale. This meeting was arranged for Saturday 16 December. At that meeting Mr and Mrs Wealleans met Jacqueline McDermott, a real estate agent engaged by CISL, and Mr Mika who was a financial adviser. They met first with Mr Mika who went through a personalised investment plan with them and gave them financial scenarios for the purchase of an apartment. He told them the amount that they would need to contribute by way of additional cash payments to meet a loan, and his estimate of the value of the apartment at the end of each year and then every five years and then 10 years. This document was called a Property Investment Analysis (PIA). Mr Mika had also calculated how much they could afford to pay for an apartment. In addition he worked out the deductions or tax credits that could be received by Mr and Mrs Wealleans if they established an LAQC, [a loss attributing company]. The Property Investment Analysis, or PIA is prepared for the Zest apartment, 72–78 Nelson Street, Auckland Central that Mr and Mrs Wealleans bought.

[6] The Tribunal were told that after the assessment by Mr Mika, Ms McDermott told the couple that only the Zest apartment was suitable for their budget. Mr and Mrs Wealleans went to see the Zest apartment. When they returned to the office, they were asked by Ms McDermott if they wished to make an offer[1]. They said that they did and they paid a deposit of $1,000. The agent or the Wealleans' accountant[2] arranged for them to see a lawyer. The Tribunal were unclear as to whether it was on the same day (Saturday) or the following Monday that they saw a lawyer. The agreement that they signed was subject to finance, contained a guaranteed rental agreement and an outgoings clause which removed the need for the Wealleans to pay any outgoings on the apartment for two years. The purchase price was $248,000. The Wealleans borrowed $253,500 to complete the purchase.

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[1] They may also have seen Mr Mika again but as he did not give evidence this point is not clear.

[2] The evidence is unclear. The lawyer Mr Unkovich was on CISL's "*panel*" but the referral may have been from the Wealleans' accountant. Nothing turns on this fact.

[7] In 2010 they were finding the ongoing losses of approximately $11,000 per annum (excluding tax credits) to be a burden and wished to sell the property. They discovered that their apartment was worth approximately $143,000 against a loan of approximately $253,000. Mr and Mrs Wealleans could not afford to sustain the capital loss and did not sell the apartment. They still own it. The bank loan is now approximately $247,000. The property has risen in value but is still not worth $248,000 or the figure which L J Hooker in their property investment analysis considered it would be worth after six years (somewhere between $301,000 and $306,000).

[8] When she discovered this drop in price Mrs Wealleans wrote to Mrs Brown asking for assistance. She asked whether or not L J Hooker would help by repurchasing the property. Mrs Brown replied suggesting they obtain proper accounting advice and also noted that no one could have anticipated the global financial crisis. Following that reply Mr and Mrs Wealleans complained to the Real Estate Agents Authority. The Real Estate Agents Authority referred the matter to the CAC. The CAC investigated and determined to lay a charge against Mrs Brown. Mrs Brown appeals that decision as well as defending the charge.

The Issues:

Issue 1

[9] Is CISL's marketing scheme real estate agency work?

Issue 2

[10] If the facts which make up Charge 1 do amount to real estate agency work are they merely evidence of the industry standards at that time?

Issue 3

What effect do the disclaimers contained in the L J Hooker material have on the licensee's liability?

Issue 4

[11] Was the property "*marketed to"* the Wealleans?

Issue 5

[12] After considering all the facts was the defendant seriously negligent?

Issue 6

[13] Do the facts show that there was a representation that the best time to invest is NOW and if so does this amount to seriously negligent real estate agency work? [Charge 2]

Issue 1: Is this real estate agency work?

[14] The issue is whether the work undertaken by CISL through the totality of their interactions with Mr and Mrs Wealleans, [i.e. from initial seminar to conclusion of the

Agreement for Sale and Purchase], was real estate agency work or are only the steps involving an agent covered by the Real Estate Agents Act?

The steps undertaken were:

- Step 1: The telemarketing where a phone call was made to Mr and Mrs Wealleans.
- Step 2: A written invitation to attend the seminar.
- Step 3: The seminar at which investment options are presented with an emphasis on property investments. No specific property or properties are identified.
- Step 4: The home visit with Mr and Mrs Wealleans – Mr Phelan goes through workbook.
- Step 5: Contact between Ms McDermott and Mr and Mrs Wealleans to arrange a meeting in Auckland.
- Step 6 The meeting in Auckland, meeting with Mr Mika and then Ms McDermott, viewing and seeing the property, making a decision to purchase and doing so.

[15] The defendant submits that the only real estate agency work undertaken by CISL were the interactions which involved Ms McDermott [the real estate agent] and the Wealleans and that other steps cannot amount to real estate agency work as they do not fall within the definition of real estate agency work in the Real Estate Agents Act 2008.

[16] Real estate agency work is defined in the Act as:

> Section 4 Real Estate
>
> *(a) "Any work done or services provided in trade on behalf of another person for the purposes of bring about a transaction and*
>
> *(b) includes work done by a branch manager or salesperson under the direction of or on behalf of an agent to enable the agent to do work or provide services*
>
> (c) *but does not include:*
>
> (i) *provision or of general advice or materials to assist owners to locate and negotiate with general potential buyers or*
>
> (ii) *newspapers that include advertising...*
>
> …
>
> *(v) the provision of investment advice".*

[17] The defendant submits that the evidence shows that CISL was not acting on another person's behalf, that the conduct was not for the purpose of bringing about a transaction and the advice given by CISL was investment advice (see s 4(1)(c)(v).)

Mr Spring submits that these three matters mean that the conduct complained of is not real estate agency work as these are all necessary steps to satisfy the definition of real estate agency work within the Act. Further he submits that the seminars and meetings and materials provided in Hamilton (steps 1 to 4) are not 'marketing' apartment 933, 72-78 Nelson Street, Auckland and therefore cannot be subject to the charge.

[18] The defendant submits that the definition of real estate agency work contained in s 4 of the Real Estate Agents Act 2008 requires there to be another person on whose behalf an agent is working (ie the vendor) and the purpose must be for bringing about a transaction. The defendant submits that CISL was not acting on any other person's behalf at any time in the first four steps in the purchase process.

[19] They identify a number of facts which support this conclusion:

(i) The evidence of the complainants that the seminar and the home visit were about property investment generally and not about a specific property.

(ii) That CISL was marketing a number of apartments for a number of different vendors.

(iii) The defendant submits that the wording of the definition contemplates real estate agency work occurring on behalf of <u>one</u> person only, [being in the singular]. Mr Spring submits that this is consistent with an agent's fiduciary duty to a vendor to act in their best interests over the interests of other parties. Mr Spring submits that prior to any particular property being identified, CISL could not have been acting in the interests of one of the vendors to the exclusion of the others. They submit further that CISL's conduct was not for the purposes of bringing about a transaction, rather the purposes of the seminar and home visit were more in the line of education and profile raising and generally increasing interest in property investment in Auckland[3]. The defendant also submitted that the materials themselves, [the slide show, the property investment seminar, the brochure provided, the booklet on the home visit] are all designed to provide investment advice and none mention any specific property.

[20] The Complaints Assessment Committee submit that Steps 1 to 6 are all part of a real estate transaction and that it is artificial to try and separate the transaction into those steps which are real estate agency work and those which are not. They submit that the defendant's analysis does not properly reflect the evidence which is that the process was one (seamless) transaction. Mr Hodge submitted that a piecemeal approach would undermine the consumer protection purpose of the Act and ignore the fact that some matters not within the definition such as placing advertisements, are real estate agency work when carried out by an agent for the purpose of bringing about a sale of a particular property.

[21] The Real Estate Agents Authority submits that the defendant is wrong in its submission that the definition of real estate agency work is work occurring on behalf of one person only, and that the absence of any particular property is fatal to the work being real estate agency work. Mr Hodge referred the Tribunal to the decision of the

[3] As set out in the evidence of Mr Smith and Mr Morley for Ms Brown

Supreme Court in *Premium Real Estate v Stevens*[4]. That case held that real estate agents are not required to act in the interests of one vendor to the exclusion of the interests of other vendor clients.

[22] The Real Estate Agency Authority submitted that s 33 of the Interpretation Act 1999 provides that words in the singular include the plural. Mr Hodge submitted that:

> *"Removing these misunderstandings it can be seen that the definition of real estate agency work is broad enough to apply to an agent who is carrying out work or services in-trade on behalf of his or her vendor/clients for the purpose of bringing about a transaction for at least one of those vendor/clients".*

The Real Estate Agency Authority submit that this is precisely what CISL were doing up to and including 16 December 2006. They also submit that to follow the definition advocated for by the defendant would mean that much of the consumer protection nature of the legislation would be lost and that an agent would become subject to the provisions of the Act only when engaged in contractual negotiations with a purchaser on behalf of a particular vendor in respect of a particular property.

[23] The Real Estate Agents Authority submit that all six steps must be regarded as a total package by CISL designed to bring about a sale. They submit Mrs Brown agreed with this[5] in her evidence. Further they submit that in fact it is quite common for licensees to provide indications of market conditions and show a purchaser a range of properties prior to the specific identification of a property which is eventually purchased.

[24] They submit that the definition must be applied objectively examining the overall context of the events and on the basis of the known facts. They submit that:

- CISL were engaged by the vendor to act as its agent in the sale of the Zest Apartments and therefore an inference can be drawn that at least part of their marketing strategy was to locate potential purchasers and promote the sale of the Zest apartments.

- The investment advice was not given in a vacuum, it was given for the purpose of bringing about a sale of the Zest Apartments on behalf of the vendor.

Discussion

[25] It is necessary to give the definition of real estate work an interpretation which is in keeping with the purposes of the Act (s 3) and the words used by the Act. The purpose of the Act is of course *inter alia* to act as consumer protection legislation. This Tribunal must be mindful of the exclusions contained in s 4 of the Act but must also interpret s 4 in the light of s 3.

[26] The Interpretation Act 1999 says at s 5:

> *"(i) The meaning of an enactment must be ascertained from its text and in the light of its purpose."*

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[4] [2009] 2 NZLR 384
[5] See Notes of Evidence, page 304

[27] That having been said, the Tribunal must also be careful not to give too wide or liberal interpretation to real estate agency work. It must be able to be seen on an objective analysis that the conduct complained of amounted to work designed to bring about a transaction. In this context 'a transaction' must mean a sale of some property. The property does not have to be identified before real estate work can commence but there must be some intention of a transaction at the end of the interaction.

[28] The Tribunal consider that all the facts must be examined to see what conduct falls within the definition. As Mrs Brown and Ms McDermott acknowledged the purpose of the seminar and home visit was to induce the attendees to buy property. It was a sophisticated marketing policy for the purpose of bringing about the sale of apartments (or at least those on L J Hooker's books) to potential investors. If Mr and Mrs Wealleans had not come to Auckland to meet with Ms McDermott it is unlikely that the previous contact would have amounted to real estate agency work, but it is the complete factual situation which the Tribunal must examine to see if the totality of the conduct amounts to real estate agency work. This conclusion is strengthened by the recognition that the defendant as a real estate agency firm was providing real estate investment advice for one purpose – to facilitate and encourage purchasers to buy property. They succeeded with the Wealleans and it would be artificial to ignore those steps [1 to 4] which directly lead to the purchase.

[29] We find that while there must be another person on whose behalf an agent is working it need not be a vendor who is identified prior to the real estate agency work commencing. That is it need not be a known vendor for a known property for real estate agency work to be undertaken. It is common for an agent to show a potential purchaser many properties and that the work that they do for each hopeful vendor and each of those properties still amounts to real estate agency work.

[30] We accept that the provision of investment advice *per se* is not within the definition of real estate agency work. As set out above we consider that had the work done by the CISL stopped at the end of the seminars and visits in Hamilton it would not have amounted to real estate agency work. Instead it would be regarded as investment advice. However for the Wealleans 'the transaction' comprised all of their visits in Hamilton and their attendances in Auckland. All of these collectively amount to real estate agency work for the purposes of bringing about the sale of the Zest apartment to Mr and Mrs Wealleans. This purposive interpretation satisfies s 3 of the Real Estate Agents Act and s 4 as well as the principles of the Interpretation Act.

[31] Further we do not accept the submission that the definition can only include work done for one vendor (i.e. in the singular). We consider this interpretation does not make any logical sense or comply with ss 5 and 33 of the Interpretation Act or a purposive interpretation of the Act. Accordingly we find that all six steps collectively amount to real estate agency work. The Tribunal also considered that the evidence of Ms McDermott which is set out at para [35] below supports this conclusion.

Issue 2

[32] Can this conclusion be challenged by the evidence of Mr Smith and Mr Morley that the investment seminar and other attendances in Hamilton were nothing more than raising the profile of investment in the property market generally and creating a long-term plan/environment for those considering a potential purchase?

[33] While the evidence from the industry about market practice is obviously important we do not consider that in this case market practice is relevant to determine whether the conduct falls within the definition of real estate agency work.

Issue 3

[34] We consider the disclaimers in the materials [whatever their contractual or tortious significance] cannot remove professional liability. The Tribunal identifies the relevant standard and those agents who do not meet it cannot rely on exclusion clauses to say that liability for misconduct has not occurred.

Issue 4

[35] The next issue is the submission made by the defence that the wording of the charge means that the charge cannot be established because the property was not "*marketed*" to the Wealleans.

[36] The defendant submits that the gravamin of the charge is that the Real Estate Agents Authority must show that the apartment purchased by the complainant was marketed in a way which created the impression that CISL was acting in the complainant's best interests. The defendant submitted that the evidence can only demonstrate that the property was marketed in Auckland on 16 December 2006 and not at all prior to that stage.

[37] The Real Estate Agents Authority submitted that it is logical to interpret the change so that "*marketed*" is seen as the totality of all the steps.

[38] The Tribunal find that the charge means "*marketed*" in the sense of all the six steps and the way in which the idea of purchasing an apartment was sold to the Wealleans. The actual apartment itself was not "*marketed*" in that sense but the desirability of buying an apartment was marketed in a very intensive way. Ms McDermott said, when asked about selling the property that this was a 5 stage process. She also said it was different to normal real estate agency work as this work was working with a buyer and she did not actually deal with a vendor directly. As the salesperson she was given a 'pre-qualified' buyer and showed them a show home and not the unit they were buying. Ms McDermott indicated that the marketing was a 5 stage process.

1. Seminar.

2. Consultant visit to the clients in their home.

3. Clients' details analysed.

4. Arrangement to see specialised financial adviser.

5. Real estate sales process to inspect suitable investments recommended by (Jackie and) CISL.

Taking into account this evidence and our conclusion on the meaning of 'marketed' in this context we conclude therefore that the property was marketed to the Wealleans.

Issue 5

[39] After considering all the facts does the Tribunal consider that the defendant was seriously negligent? In order to reach this conclusion the Tribunal must make a factual finding that it considers that the promotional and marketing materials of the CISL was such as to create the impression in the Wealleans that CISL was acting in their best interests rather than the interests of the vendor. As many witnesses commented during the hearing of this case it would be unusual if most purchasers did not know that an agent was acting on behalf of a vendor. Yet tellingly the evidence from Ms McDermott was that she considered that she was acting for the purchaser in this transaction because it was somewhat different from the normal sales process.

[40] We consider that on the unique facts of this case that the marketing policy was so professional that the Wealleans did consider that the CISL were acting in their best interests. It seems that the vendor, Conrad Trust did not feature in anyone's considerations. There was no negotiation on the price as Ms McDermott told the Tribunal. Mrs Wealleans' belief was evidenced by the letter that Mrs Wealleans wrote to Ms Brown when they discovered the market had dropped.

[41] However was this serious negligence on behalf of Ms Brown? Evidence as to industry standards is relevant and was given by Ms Box for the Real Estate Agents Authority, Mr Morley and Mr Smith for Mrs Brown. All of the experts agreed that while a competent licensee must get on well with the purchaser and work with them their primary duty can only be to the vendor and that they cannot and should not create the impression that the licensee was acting for the purchaser. Where the parties differed was in their own view of whether or not the actions of CISL in this case did give that impression to a reasonable purchaser. The defendant submits that it was not negligent, misleading or a breach of professional obligations for a real estate agent acting for a vendor to believe that a property purchase was [also] in the interests of a purchaser and act accordingly. Ms Box however felt that the evidence showed that the actions of CISL did give the Wealleans this impression.

[42] The defendant submitted that a finding of misconduct required a significant departure from industry standards. They referred to ***CAC v Downtown Apartments Limited***[6] where the Tribunal stated that a breach of s 73 requires a marked or serious departure from acceptable standards. The Tribunal relies upon the definition of professional misconduct set out in the ***CAC (1) Auckland District Law Society v APC***[7] where the full bench of the High Court said that:

> "*Professional misconduct … a deliberate departure from accepted standards or such serious negligence as, although not deliberate, to portray indifference and abuse of the privileges which accompany registration as a medical practitioner (citing Pillai v Messiter)".*

[43] This statement is the basis of the citation in ***Downtown Apartments*** as to the definition of professional misconduct.

[44] The Real Estate Agents Authority submits that conduct is serious negligence if it can fairly be regarded as portraying indifference and an abuse of the privileges

[6] [2010] NZ READT 6
[7] [2008] 3 NZLR 105

accompanying the holding of a licence as an agent. They submit that this test has been met.

[45] The Tribunal accepts that Mrs Brown did not consider that what she was doing (via the employees or contractors of CISL) was wrong. Mr Spring submits that in order to find professional misconduct the Tribunal must be satisfied that the Real Estate Agents Authority has discharged the burden of proof to provide evidence of the accepted standard and "*demonstrate that the licensee's actions were a deliberate and serious departure from that standard*".

[46] The Tribunal accept that the accepted standard in the industry has been established by the evidence all of the expert witnesses called by the parties.

[47] However the test is objective not subjective. The Tribunal consider that the licensee's actions in this case were a deliberate and serious departure from the acceptable standards. In this case the misconduct is established by serious negligence which although not deliberate portrays an indifference and abuse of privilege [*CAC v APC*]. The Tribunal consider that the sophistication of this policy was such that unsophisticated investors such as the Wealleans did not question the impartiality of CISL and truly considered that the totality of advice that they were getting was in their best interests, when, had they been more sophisticated, and more financially aware they would have been aware that the advice was really all designed to assist in concluding a sale. The conduct was a seriously negligent departure from acceptable standards because the impression created was one of support, encouragement and assistance to the exclusion of any other party (i.e. vendor) and any other party's interests when the reality of the situation was the opposite. Accordingly the Tribunal find that Charge 1 has been established on the balance of probabilities by the Real Estate Agents Authority.

[48] The Tribunal have considered the evidence of Mr Appleby and Mr Dent and the statement at issue in this charge. On balance they do not consider that Charge 2 has been established by the prosecution on the balance of probabilities. In contrast to the totality of the transaction prescribed in Charge 1, Charge 2 asks whether or not Mr and Mrs Wheallans were misled by a statement saying *"currently we're experiencing a buoyant property market in Auckland. All the indications are that this is not likely to change now or in the future. The best time to invest is NOW"*. The Tribunal consider that this statement would be taken by any objective viewer as puffery or hyperbole and not a reliable statement of the correct time to purchase a property. The statement(s) which were contained in marketing material led to the purchase of the apartment but it was all of the six steps which misled the Wealleans not this statement alone. The Tribunal do not consider that the Wealleans were misled by the statement. The Tribunal draw a clear distinction between this charge and Charge 1. Charge 1 requires the Tribunal to look at the totality of the conduct and this charge focuses attention on one statement. Accordingly the Tribunal find that Charge 2 has not been established on the balance of probabilities and dismiss that charge.

The Appeal

[49] Insofar as the appeal relates to Charge 2 it is allowed. The decision of the Complaints Assessment Committee relating to Charge 2 is set aside.

[50] Insofar as the appeal relates to Charge 1 the appeal is declined and the decision of the Tribunal and the penalty order will accordingly modify the Complaints Assessment Committee's decision.

Penalty

[51] Normally the Tribunal would seek submissions on a penalty before imposing the penalty. However the only penalty available to the Tribunal under the 1976 Act are:

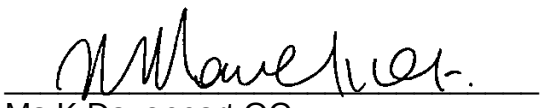
(a) Suspension or cancellation of Mrs Brown's licence; and
(b) A $750 fine.

[52] The Tribunal do not consider that the conduct complained of in this case against Mrs Brown, the manager of the business, was significant enough to interfere with Mrs Brown's licence. The Tribunal considers that this decision is educative for the industry as a whole but for Mrs Brown personally, considers that a fine of $450 is a sufficient penalty for this case.

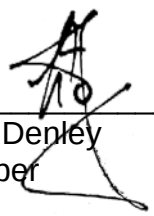
[53] Because of the restrictions imposed by the 1976 Act the Tribunal cannot consider compensation or a larger fine or order Mrs Brown to take any steps which would assist the Wealleans. Their remedies will have to lie in the civil Courts.

[54] The Tribunal draws the parties' attentions to the appeal provisions contained in s 116 of the Act.

DATED at AUCKLAND this 24th day of June 2013



Ms K Davenport QC
Chairperson



Mr G Denley
Member

Mr J Gaukrodger
Member