

**BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

[2013] NZREADT 54

READT 047/12

**IN THE MATTER OF** an appeal under s.111 of the Real Estate Agents Act 2008

**BETWEEN** **RICHARD PROSSER AND SALLY QUINTRELL**

Appellants

**AND** **THE REAL ESTATE AGENTS AUTHORITY (CAC 2008)**

First respondent

**AND** **JOSEPH WARD**

Second respondent

**AND** **MARTIN DEAR**

Third respondent

**MEMBERS OF TRIBUNAL**

Judge P F Barber - Chairperson  
Mr G Denley - Member  
Mr J Gaukrodger - Member

**HEARD** at WHANGAREI on 28 June 2013

**DATE OF DECISION** 4 July 2013

**APPEARANCES**

The appellants on their own behalf  
Ms S G J Locke, Counsel for first respondent Authority  
Mr T D Rea, Counsel for second and third respondent licensees

**DECISION OF THE TRIBUNAL**

***Introduction***

[1] This is an appeal by vendors against a 29 June 2012 decision of Complaints Assessment Committee 20004 to take no further action against licensees Joseph Ward (the second respondent) and Martin Dear (the third respondent) employees of certain branches of Barfoot & Thompson Ltd.

### ***Basic Facts***

[2] On 25 January 2011 the appellants listed 542 Pahi Road, Pahi, (on Kaipara Harbour), (the property) with the second respondent for sale by auction with a six-week promotion period.

[3] On 4 February 2011, the third respondent telephoned the vendor Ms S J Quintrell. At some stage the possibility of releasing the appellants from the listing agreement was discussed. The appellants and the second and third respondents have very different recollections of that telephone call. The appellants felt it to be aggressive and intimidating; the respondents considered it mere efficient administration.

[4] At some stage after the listing agreement was formed between the appellants and the second respondent, the second respondent moved to Barfoot & Thompson's West Harbour branch from the Whangarei branch. The appellants say they were not warned of this and that it affected the marketing process; and the second respondent does not accept that.

[5] The appellants allege a number of issues during the marketing of the property, including communication difficulties, and variations to the marketing calendar contrary to their agreement.

[6] An auction of the property was held on 12 March 2011 but the reserve price was not reached by the bidding and it passed in with the highest bid at \$550,000. However, the second respondent continued to negotiate with the top bidder and a final offer of \$706,250 was eventually accepted by the appellants.

[7] Settlement of the sale occurred on 30 June 2011. The appellants seem relatively satisfied with the price achieved for the property.

### ***Appeal Issues***

[8] The appeal involves a number of factual disputes which can be grouped under the following headings:

- [a] Alleged threat of possible withdrawal of the appellant's listing by the second respondent;
- [b] The transfer of the second respondent to another office; and
- [c] Communication and administration issues.

### ***The Committee's Decision***

[9] In relation to the Committee's decision-making process, the appellants alleged that:

- [a] The Committee failed to follow due process by considering confidential information from mediation between the parties;
- [b] The Committee accepted irrelevant and incorrect information; and
- [c] The Committee was not properly familiar with the file.

[10] We have no reason to treat these criticisms of the Committee as valid.

[11] In its decision of 29 June 2012, with regard to all issues and their detail, the committee considered that the complaints had not been proved against the licensees on the balance of probability.

[12] The Committee held that the complainants had not proved that the alleged telephone call was aggressive or intimidating due to a clear conflict of evidence and dismissed that aspect of the complaint.

[13] Similarly, the Committee dismissed all other aspects of the complaints. At its para 4.11 the committee stated: *"Clearly there were issues between the parties. But are the issues significant enough to constitute "unsatisfactory conduct" under the Act? For the reasons that follow, we consider that they are not"*. The Committee then set out a number of matters of detail and stated at para 4.20:

*"We do not consider that the First Licensee's conduct fell short of the standard that reasonable members of the public might expect from a reasonably competent licensee. There is no element of incompetence or negligence established. In our view, agents of good standing would not regard the first licensee's conduct as unacceptable."*

[14] The overall decision of the Committee was set out in its para 5.2 as follows:

*"The Committee has determined under section 89(2)(c) of the Act to take no further action with regard to the complaint or any issue involved in the complaint."*

[15] The Committee's decisions were provided with full and clear reasoning.

### ***The Hearing Before Us***

[16] Detailed briefs of evidence and submissions were filed with us by the parties.

[17] Before us, the appellant, Ms S J Quintrell, covered the concerns of the appellant in detail and was carefully and thoroughly cross-examined by Mr Rea. At the completion of her evidence, we suggested that it seemed possible to settle all issues by agreement because, in her clear and candid evidence, Ms S J Quintrell had, inter alia, stated:

*"We would like Barfoot & Thompson Ltd and the second and third respondents to acknowledge that their behaviour was unacceptable and to apologise to us"*.

[18] We then provided the parties with two adjournments for discussion and thought. That led to the following agreement being signed by the parties and meeting with our approval, namely:

*"In regard to the sale of your property at Pahi Road, Kaipara we Martin Dear and Joseph Ward wish to apologise to Sally Quintrell and Richard Prosser for any mis-communication, and errors and omissions in advertising which we with the benefit of hindsight could have handled better. We also regret any stress that was experienced during the transaction process.*

*Having now had the opportunity to have heard your concerns at this hearing we more fully understand the frustrations that you have experienced.*

*Martin Dear 28/06/2013*

*Jim Ward 28/06/2013"*

[19] We also understand that part of the settlement arrangements between the parties is that there has been full and final settlement on the basis that there be no further litigation or action in any forum arising out of the facts of this case.

**Outcome**

[20] Accordingly, while the outcome from, and approach of, the Committee is adopted by us, we amend its Orders to include the above apology and settlement provisions between the parties. However, we also (as did the Committee) determine to take no further action against the second and/or third respondents.

[21] We think it only fair to emphasise that unsatisfactory conduct has not been proved against the second and/or third respondents but, in any case, they have made the apology set out above and are to be commended for that as are the appellants for accepting it. We have congratulated the parties for achieving resolution of the issues with a view to putting matters behind them and getting on with their respective lives.

[22] Technically, this appeal is dismissed on account of the said settlement.

[23] Pursuant to s.113 of the Act, we record that any person affected by this decision may appeal against it to the High Court by virtue of s.116 of the Act. However, we would not have thought it practical that a consent decision could found an appeal.

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Judge P F Barber  
Chairperson

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Mr G Denley  
Member

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Mr J Gaukrodger  
Member