BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2013] NZREADT 75

READT 012/12

IN THE MATTER OF	an appeal under s.111 of the Real Estate Agents Act 2008
BETWEEN	**PAUL WEBER**
	Appellant
AND	**REAL ESTATE AGENTS AUTHORITY (CAC 20002)**
	First respondent
AND	**DAVID PENROSE**
	Second respondent
AND	**BROWN'S REAL ESTATE**
	Third respondent

MEMBERS OF TRIBUNAL

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

HEARD at QUEENSTOWN on 10 December 2012 and 1 February 2013 and (with series of subsequent written submissions)

DATE OF DECISION 2 September 2013

APPEARANCES

The appellant on his own behalf (with Mr A Rose as a McKenzie friend)
Mr R M A McCoubrey for the Authority
Mrs F E Guy Kidd for second and third respondents

DECISION OF THE TRIBUNAL

Introduction

[1] Mr P Weber ("the appellant") appeals against a determination of Complaints Assessment Committee 20002 to take no further action against, Mr D Penrose ("the licensee"), and Brown's Real Estate Ltd (trading as New Zealand Sotherby's International Realty Ltd) ("Brown's") in respect of the appellant's complaint against them described below.

Factual background

[2] In July 2010 the appellant engaged the licensee of Brown's to sell his property at 59 Atley Road, Arthurs Point, Queenstown. After a series of negotiations, the appellant and Browns entered into an agency agreement on 9 October 2010 listing the sale price of the property as $1.195 million.

[3] The property was ultimately sold to the owner of the neighbouring property at 61 Atley Road. The licensee was not the agent who introduced the purchaser; another agent from Brown's, Mr J Brown, made that introduction.

[4] The appellant's complaint is that the conduct of the licensee prevented him from obtaining a proper sale price. This is based on his allegation that when he engaged the licensee to market and sell the property, he made it clear that he wanted to know if his neighbour made an offer, because he felt the neighbour would be willing to pay a higher purchase price than any other buyer in order to avoid the property being subdivided.

[5] While the appellant did not put this request in writing, he said he made abundantly clear to the licensee in a meeting at Brown's office in late July 2010 that $1.2 million was the minimum price expected from a purchaser "off the street" but that he expected the neighbour to pay more. If necessary, he said, he would have been prepared to "pull the property off the market ... to approach the neighbour for a higher price". The appellant states that he also made this request clear to the licensee in a number of telephone conversations in late July and August 2010.

[6] The licensee disputes this. His evidence is that the suggestion of the neighbour having an interest was "one of the many suggestions" made in the interim discussions between himself and the appellant. He states that the appellant did not stress this as an independent point of particular interest, and did not make this part of the agency or listing agreement with Browns.

[7] His evidence is that the first time he knew that the appellant was concerned about the neighbour making an offer was when the appellant asked him in an 11 October 2010 email. This was after the appellant had entered into negotiations with the purchaser, but before the appellant had accepted the purchaser's offer.

[8] The licensee said that when the appellant asked him who the purchaser was, he immediately spoke to his General Manager who told him to meet with Mr J Brown who, after obtaining instructions from his purchaser client, confirmed that the purchaser with whom the appellant was negotiating was a family company controlled by the neighbour. The licensee is adamant that before this stage, he did not know who the purchaser was.

[9] The licensee states that when the appellant found out who the purchaser was, he was still able to withdraw from the contract, but chose not to do so. Instead, he counter-offered the neighbour's offer of $1,075,000 by asking for $1.2 million having been previously prepared to accept $1,139,000 from that offeror. The neighbour (through his family company) finally agreed to $1.195 million and Brown's agreed to reduce the agency commission payable to them by the appellant by $5,000 to make up for the difference.

[10] Brown's confirmed that, from the outset, the purchaser had asked Mr J Brown to maintain confidentiality about its identity.

Further Relevant Evidence to us

Evidence of the Appellant

[11] The appellant had purchased the property in 2007 because he had fallen in love with the area and its beautiful views. However family circumstances necessitated the property being marketed from late July 2010. The appellant had contacted the licensee (David Penrose) on 29 July 2010 to sell the property because the appellant had had contact with the licensee in 2008.

[12] The licensee replied promptly to that contact from the appellant by email. He told the appellant that he knew the area well. There were a number of discussions regarding the sale process and potential buyers, a form of listing agreement, and likely price, market value, and the like.

[13] They seemed to have a full meeting about such matters on Saturday 4 September 2010 at the licensee's weekend office in Queenstown. The appellant made it clear that he thought his neighbour *"would make a great buyer"* as he regarded the neighbour as wealthy and the neighbour was in the course of extensive renovations to his own property. The appellant puts it that he was adamant to the licensee at that meeting that if the neighbour wanted to buy the appellant's property then the neighbour would be willing and able to pay more for the property *"than almost anyone else"*. The appellant put it to us that he said to the licensee that should the neighbour become interested, the vendor would withdraw the property from the market, and relist later at a higher price. The appellant cannot accept that the second respondent licensee denies that conversation having taken place.

[14] The appellant says that his lawyer made many changes to the listing agreement. He says that the reason the listing agreement did not include a clause about the appellant's instructions regarding the neighbour was that those instructions were given by the appellant to the licensee and the lawyer would not know about them.

[15] On Saturday 9 October 2010 (at 6.52 am) the licensee submitted a first offer to the appellant who says that the licensee warned him that the buyer resided in Bangkok and with his family was getting on a plane *"at any moment, time was of the essence"*. Offers and counter offers were made and the appellant says that it was only on Monday 11 October 2010 that he had a sinking feeling that he had been misled, and that day he turned to his solicitor for (further) advice. That led to the licensee ascertaining and disclosing that the prospective buyer was the neighbour, and advising that was known to the agency (Sotherby's) all along but not to Mr Penrose the second respondent/licensee. The appellant says that the licensee then informed the appellant that he had burned all his bridges with the neighbour and he now had the last opportunity to strike any deal with the neighbour and he might lose that sale opportunity *"for good"*. The appellant says that, then being very angry and frustrated, he permitted the licensee to take his counter offer of $1.2 m to the neighbour who would not accept a price greater than the listed asking price of $1.195 m. However, the licensee and his employer firm (the third respondent) agreed to reduce their commission by $5,000 so that the appellant achieved a price of $1.2 m.

[16] The appellant was extensively cross-examined as were all witnesses. Inter alia, it was put to the appellant as to why he did not counter offer at $1.3 m being the price he really sought from the neighbour. He responded *"I was foolishly duped and trapped into the situation"*. He did not seem to answer the question put to him that he had received a

premium of $61,000 over his first counter offer of $1,139,000 - and an excess over his listing price.

[17] We understood that, throughout all negotiations, the appellant was receiving constant advice from his lawyer.

Evidence of Mr P D Cooney

[18] Evidence was given for the respondents by a Mr P D Cooney, a local builder familiar with market values in their area at the relevant time. He said that the licensee had contacted him a number of times about the availability of the appellant's property but he (Mr Cooney) felt the price sought by the appellant *"didn't financially stack up for my company to buy it"*. We understood that the price put to him was $1.2 m but he felt that much in excess of $1 m was *"too expensive"*.

Evidence of the Licensee

[19] The second respondent then gave evidence on behalf of both respondents. That evidence was quite detailed but broadly consistent with the facts referred to above. He emphasised that at his meeting with the appellant on the Saturday 4 September 2010 in his Queenstown office, he noted that the most obvious type of person to be interested as a purchaser would be a residential property developer. However as already indicated, he was unable to interest Mr Cooney. He then added *"we also discussed the possibility of the buyer being the neighbour."* He immediately continued in his evidence-in-chief *"at no stage during these discussions did Mr Weber stipulate that if the prospective buyer was the neighbour that I must or had to notify him nor did he state that this would be a requirement of the listing authority. If he had stated that I had to notify him if it was the neighbour making an offer, I would have asked the agent or agents presenting offers who the purchaser was and if they were related to the neighbours"*.

[20] The licensee then set out the history of negotiations leading to the sale in quite some detail. He emphasised that at no stage, in the course of quite extensive negotiations to have a listing agreement signed, did the appellant request that there be an amendment to the listing agreement form to include an obligation on the licensee to inform the appellant whether any perspective purchasers were the neighbour.

[21] The listing price was $1,195,000 and the listing was arranged at Friday 8 October 2010. Very soon after listing, the licensee's colleague at Sotherby's Realty in Queenstown, a Mr J Brown, obtained a $1,075,000 offer from a client of his for the appellant's property and that form of offer was signed *"Margaret Scott, on behalf of Pop Properties Ltd"*. The licensee said he had no idea that Margaret Scott or Pop Properties Ltd were connected in any way with the neighbouring property and simply did not know of them. He presented that offer to the appellant at 6.52 am on 9 October 2010 by email and provided the information that the offerors lived in Bangkok and were flying out soon, because he had obtained that from Mr J Brown. The appellant responded that he and his wife were *"looking for something north of $1,150,000"* and eventually counter-offered with $1,139,000.

[22] On Monday 11 October 2010, the licensee received an email from the appellant advising that his lawyer would like a written response from the licensee that the entity or persons making the offer were not related to the neighbour in any way. The licensee states that, as at 2.37 pm that day when he received an email to that effect, *"this was the first request I had received from Mr Weber regarding knowing whether the purchaser was the neighbour"*.

[23] The licensee then met with Mr J Brown and asked whether the offer was from the neighbour, and Mr Brown took instructions and was able to reveal that to be so. The licensee then, immediately, advised the appellant's attorney of that and emphasises *"this was the first time that I was aware that the neighbour was the entity on this offer"*. He also said *"at no point in time prior to his email dated 11 October 2010 did Mr Weber ask me the question who is Margaret Scott or Pop Properties Ltd"*.

[24] A little later that day, the appellant told the licensee that had he been aware that the offeror was the neighbour, his counter offer would have been $1.2 m rather than $1,139,000. A little later the appellant counter offered and initialled a price of $1.2 m which was above the initial listed asking price. The licensee explained the position to Mr J Brown who felt it would be very difficult to have the prospective purchaser increase the price. However, the purchaser finally agreed to $1,195,000 and the real estate agency agreed to reduce its fee or commission to the appellant by $5,000 in order to broker the sale. That was agreed to by the appellant with the agency (Sotherby's) the final version of the agreement for sale and purchase was then signed by both parties.

[25] In his evidence-in-chief the licensee had particularly emphasised that he had never told the appellant that Mr J Brown would alert him if the neighbour showed any interest; nor was there any agreement between the appellant and the licensee that a price higher than the listing price of $1.195 m was required from the neighbour; that he had never told the appellant that the neighbour had no interest in purchasing the property; that he was never asked whether the neighbour would be interested; that the appellant did not tell the licensee at any stage that he would withdraw the listing of the property if the neighbour entered the picture; and that he had, certainly, never admitted that he knew that the buyer all along was the neighbour. He also emphasised that he had never been asked by the appellant to confirm that the neighbour was not purchasing the property until the appellant's email to him of 11 October 2010 referred to above.

[26] The licensee also emphasised that he first presented an offer to the appellant at $1,075,000 and that the appellant counter offered with $1,139,000 but, after finding out that the offeror was the neighbour, the appellant required $1.2 m; and, by the work of the agents with the neighbour and the reduction of commission as referred to above, the neighbour agreed to buy at $1,195,000.

[27] In the course of extensive cross-examination, the licensee emphasised that he had no idea of the knowledge Mr J Brown possessed about the offeror prior to the disclosure covered above, and that he, the licensee, had no relationship whatsoever with the neighbour buyer.

Evidence of Mr N D Brown

[28] There was evidence from a Mr N D Brown who is the licence holder of the third respondent and a very experienced real estate agent. He is the brother of the said Mr J Brown. He had no direct involvement in this transaction and seems to have become involved due to the complaint of the appellant. He said that the listing price was high and did not expect it to be achieved on the market at that particular time. He thought the price achieved was *"a pretty high price to be paying out there for that property because in 2010 things were on a go slow in Queenstown"*. He had not known the identity of the offeror prior to the licensee finding that out from Mr J Brown. He felt that the appellant has received *"a premium on sale over the value of the property at the time"*.

Evidence of Mr J Brown

[29] The final witness was Mr J Brown who is also a very experienced real estate agent in Queenstown with international real estate connections. He said he had a past working relationship with the neighbour which had bought its property through that agency (Browns). He made it clear that he did not act for the neighbours in relation to the transaction in issue as clients, but as customers because the agency was working solely in the appellant's, as vendor, best interest because the appellant vendor was the agency's client. In his evidence-in-chief he stated:

> *"6. I recall that I met the appellant Paul Weber. I was just walking into the Mountaineer Building in Queenstown where our offices are situated over a weekend. I ran into David Penrose and Paul Weber in the lobby of the building and I was introduced to Mr Weber. The meeting was a matter of seconds. He was introduced to me "as the owner of the piece of land at Arthur's Point". David had mentioned that he was meeting someone with a piece of land at Arthur's Point.*
>
> *7. I had no more contact with the vendor thereafter."*

[30] That incident seems to have been when the appellant met the licensee at his office in Queenstown on 4 September 2010.

[31] When Mr J Brown knew that the property had been listed, he decided to approach the next door neighbour as a customer of his. The neighbour and his wife lived in Bangkok at the time and had purchased the neighbouring property as a holiday home where they were at that time.

[32] Mr J Brown then described the offer and acceptance process. He said he had conveyed to the licensee that the customers were about to fly back home to Bangkok. Inter alia, he described how his neighbour customers were incredulous over the appellant requiring the price to be increased from $1,139,000 to $1.2 m and emphasised that was over the advertised price, but he (Mr J Brown) had them sign an offer at $1,195,000 on the basis that he reduced commission. He emphasised that he had never before experienced a vendor seeking more than the advertised list price. We understood him to state that he had never told the identity of his customer purchasers to the licensee, Mr Penrose, until formally requested to as described above.

The Committee's decision

[33] The Committee decided to take no further action in relation to the appellant's complaint and, in summary:

[a] Particularly considered the issue of notification of any interest from the neighbour should the licensee take an offer to the appellant to consider;

[b] Found that there was nothing in the correspondence indicating that such a notification was discussed between the parties around the time when the property was being listed;

[c] Took the view that, if the notification was of such importance to the appellant, it would have expected him to have raised that at the outset of discussions and, certainly, at the time when the agency or listing agreement was signed; and it

was clear that the appellant was particular about the content of the agency agreement;

[d] Found that the licensee would have been required to record any such notification instruction special requirement on the listing documentation to ensure that any agent dealing with the property was aware of this stipulation. There was no evidence of such a condition being recorded;

[e] Noted that the documentation did not show any written record of the neighbour issue and nor was this apparent from correspondence from the appellant's solicitor in a context where the appellant was consulting regularly with his solicitor and took advice from him about the agency agreement. It would have been likely that the appellant's solicitor would have recommended an appropriate clause to cover that circumstance, had it been raised.

[f] Noted the inherent difficulty in a situation where a vendor wished to market a property at different prices to different parties. Such marketing could not have been undertaken and it was expected that the parties would have negotiated on this issue before the agency agreement were signed. There was no evidence of such negotiation;

[g] Found that, at the time the property was listed, there was insufficient evidence to conclude that the licensee was advised of the need to notify the appellant if the neighbour wished to purchase his property; and

[h] Found that the property was listed after negotiation with the appellant and that the appellant had set and agreed to the listing price which was ultimately achieved.

[34] We agree with those views of the Committee.

Statutory context

[35] Sections 72 and 73 are key provisions in the complaints and disciplinary regime created by the Real Estate Agents Act 2008 (the Act). Section 72 sets out what constitutes *"unsatisfactory conduct"* by a licensee, and s 73 sets out what constitutes *"misconduct"* by a licensee. These sections read:

> ***"72 Unsatisfactory conduct***
> *For the purposes of this Act, a licensee is guilty of unsatisfactory conduct if the licensee carries out real estate agency work that—*
> *(a) falls short of the standard that a reasonable member of the public is entitled to expect from a reasonably competent licensee; or*
> *(b) contravenes a provision of this Act or of any regulations or rules made under this Act; or*
> *(c) is incompetent or negligent; or*
> *(d) would reasonably be regarded by agents of good standing as being unacceptable.*
>
> ***73 Misconduct***
> *For the purposes of this Act, a licensee is guilty of misconduct if the licensee's conduct—*
> *(a) would reasonably be regarded by agents of good standing, or reasonable members of the public, as disgraceful; or*

> *(b) constitutes seriously incompetent or seriously negligent real estate agency work; or*
> *(c) consists of a wilful or reckless contravention of—*
> *(i) this Act; or*
> *(ii) other Acts that apply to the conduct of licensees; or*
> *(iii) regulations or rules made under this Act; or*
> *(d) constitutes an offence for which the licensee has been convicted, being an offence that reflects adversely on the licensee's fitness to be a licensee."*

[36] Among other things, a wilful or reckless breach of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009 (Rules) constitutes misconduct (s.73(c)(iii)). A breach of the Rules constitutes unsatisfactory conduct (s.72(b)).

[37] The Rules "... set minimum standards that licensees must observe and are a reference point for discipline" - Rule 3.3. Relevant provisions include:

[a] Rule 6.1: A licensee must comply with the fiduciary obligations to his or her client arising as an agent.

[b] Rule 6.2: A licensee must act in good faith and deal fairly with all parties engaged in a transaction.

[c] Rule 6.4: A licensee must not mislead a customer or client, nor provide false information, nor withhold information that should by law or fairness be provided to a customer or client.

[d] Rule 9.4: A licensee must communicate regularly and in a timely manner and keep the client well informed of matters relevant to the client's interest.

[38] These rules clearly set out obligations owed to all parties to a transaction, vendor or purchaser - *Evans v REAA CAC 10054 & Orr* [2012] 67 at [47]. The rules also create obligations to those who deal with real estate agents.

The Issues

[39] The issues are both factual and legal. The appellant challenges the Committee's factual findings. He is adamant that the licensee was well aware of the appellant's requirement that he (the appellant) be told if the neighbour made an offer on the property. The licensee denies this.

[40] Was the Committee correct to take no further action or were findings of unsatisfactory conduct or misconduct open to it?

[41] There is also the aspect whether, and how, a marketing campaign can, from a legal and/or policy perspective, distinguish in price between different prospective purchasers.

[42] The Authority submits that where an agent knows that the vendor client wants to be told (or should be told) certain information, and that agent comes into that information, the agent must pass that information on to the client subject to any legal or ethical constraints. We agree.

[43] Whether the licensee knew that the appellant wanted to know about the neighbour making an offer, and whether the licensee actually knew that it was the neighbour making the offer but failed to pass that information on, are matters for us to determine. If we find

that the licensee knew of these two matters but failed to pass that information on to the appellant, it must follow that his conduct was, at least, unsatisfactory.

Discussion

[44] From our experience at endeavouring to assess credibility of witnesses we have no reason to disbelieve any of the witnesses in this case. The differing viewpoints must be the result of misunderstandings or confusion or the passage of time. We are conscious that the appellant is a leading American cancer surgeon and we would not expect him to misunderstand matters.

[45] The appellant is convinced that, had he been informed from the outset that the offeror was the neighbour, he could have obtained $1.3 million for the property from that neighbour as the purchaser rather than the $1.2 million which, in effect, the licensee achieved for him. The evidence is that the $1.2 million was a very good and fortunate price in terms of the state of the market at the time of the sale and purchase transaction. It is $5,000 more than the appellant's listing price of $1.95 m. Also, the evidence discloses that the licensee achieved the $1.2 million price with quite some common sense, skill, and experience in all the circumstances.

[46] Nevertheless, the issue is the standard of the conduct of the respondents in terms of the appellant's sale instructions to them.

[47] The appellant is convinced that both respondents knew of the interest in his property of the purchaser as a neighbour and did not advise the appellant of this before he commenced negotiations with the neighbour through the licensee.

[48] However, we are satisfied that the licensee had no idea that the offeror/purchaser was the neighbour until he was told that by Mr J Brown on 11 October 2010 as we have described above. Brown's, as second respondent, could be imputed with the knowledge of Mr J Brown that the offeror who became the purchaser was the appellant's neighbour, but no one in Brown's firm knew of the appellant's concern or intentions over that aspect.

[49] When we stand back and look at the evidence overall, we cannot be satisfied on the balance of probability that the appellant at the outset or, indeed, any time prior to about 11 October 2010, stipulated that he was to be advised if any interest was shown by the neighbour and in that case the price was to increase to $1.3 million or, possibly, the property would be taken off the market. In view of the appellant's assertions, it is surprising that when he received the first offer referred to above of $1.075 m, he did not ask whether the offeror could possibly be the neighbour. Nor did he ask that until after he made his first counter offer at $1.139 m and, even then after being informed that the offeror did represent his neighbour, he counter-offered at $1.2 million and not $1.3 million in accordance with his alleged instructions to the licensee at the outset. Then, of his own free will, he sold the property at $1.195 m (due to the commission arrangements, effectively at $1.2 m).

[50] Bearing in mind that the appellant was in constant touch with his legal advisor, it is curious that when he first viewed the offer at $1.075 m which showed the purchaser as Margaret Scott on behalf of Pop Properties Ltd, he did not have his solicitors search that company which would have revealed that the offeror was the neighbour. Nor, at that point, did he ask the licensee whether the offeror could be a front for the neighbour. In New Zealand it is common for a property purchaser to be the family company of a person, or even a front or nominee for the purposes of confidentially.

[51] We accept that when the appellant received the very first offer from the purchaser, he was not told that the purchaser was, in effect, his neighbour and that he was not told of that until he asked on about 11 October 2010. Even then, he knew that in time to abort the transaction, but he decided to proceed. However, we are satisfied that he could not have been expected to have been told from the outset that the purchaser was the neighbour, because neither respondent then knew of that concern of the appellant and it was only Mr J Brown who knew that the offeror was the neighbour.

[52] There were detailed submissions about the nature and extent of a real estate agent's fiduciary duties. However, at material times, neither the licensee nor Mr J Brown knew that the appellant contemplated requiring a much higher price from an offeror who was a neighbour to the property.

[53] Incidentally, for all the detailed submissions put to us by or on behalf of the appellant, we note that there is no retrospective valuation as at the time of sale which could, perhaps, suggest there was loss experienced by the appellant in relation to the market. Frankly, we consider that his concept of having two prices for the property i.e. one for the general public and a much higher one for the neighbour, was unrealistic, uncommercial, and unworkable.

[54] In view of the current almost obsessive concern of the appellant about his neighbour having purchased the property for, in effect, $1.2 million, we wonder why he so sold the property knowing that the purchaser was the neighbour and he (the appellant), seemingly, not being under any particular pressure to shorten negotiations with the neighbour.

[55] We are unable to find any failure on the part of the licensee or of Brown's Real Estate in terms of the issues on appeal. We find no merit in the appellant's assertion that they hindered him achieving a higher price from the neighbour in the circumstances.

[56] A matter which did arise from the evidence is that an appraisal which the licensee gave the appellant in about July 2010, shortly after receiving the appellant's instructions to market the property, seems quite inadequate. It seems to have only comprised the licensee advising the appellant that the licensee thought the value of the property was at least $1.2 m to a buyer *"off the street"*, and, likely, significantly more to a neighbour. If that was the only appraisal given, it does not comply with Rule 9.5 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009 which reads:

> *"9.5 An appraisal of land or a business must be provided in writing to a client by a licensee; must realistically reflect current market conditions; and must be supported by comparable information on sales of similar land in similar locations."*

[57] We cannot be satisfied that there was no further appraisal than that. There was evidence that on 2 August 2010 the licensee provided the appellant by email with information regarding sales in the area. Also, we are conscious that the asking price was driven by the firm requirements of the appellant at all material times including from the outset. The evidence of Mr N Brown is that, at material times, he would have appraised the property at about $700,000; but he would regard himself as a little conservative in terms of the optimism of his sales-people. The evidence of the licensee is that in his own mind he appraised the value of the property at material times at about $1 m, but that the appellant would not listen to him in that respect.

[58] In any case, there has been no complaint about the nature of that appraisal. We note that it shows that, at the outset, there was some thought given to the possibility of a buyer being a neighbour.

[59] While, if more evidence was heard on the issue of the appraisal, it might be possible to find that there had been unsatisfactory conduct on the part of the licensee in that respect, there has simply been no complaint about the appraisal aspect. In any case, that issue was not put to the Committee of the Authority. Our jurisdiction under s.111 of the Act provides for an appeal *"against a determination of the Committee"*. We consider that if there is no such determination then we have no jurisdiction to deal with such an issue on an appeal and, indeed, that is the view Woodhouse J expressed in *Wyatt v Real Estate Agents Authority* HC Auckland CIV-2012-404-1060, 3 October 2012.

[60] Simply put, it has not been proven that the licensee, or Brown's, failed in their conduct and duty to the appellant by not achieving a special high price from the neighbour. We agree with the reasoning and conclusions of the Committee of the Authority. Accordingly this appeal is dismissed.

[61] 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.

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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