

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2013] NZREADT 98

READT 039/12

IN THE MATTER OF

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

BETWEEN

**REAL ESTATE AGENTS
AUTHORITY (CAC 20001)**

Prosecutor

AND

DEBBIE LOVEGROVE

Defendant

MEMBERS OF THE TRIBUNAL

Ms K Davenport QC - Chairperson
Ms N Dangen - Member
Ms C Sandelin - Member

HEARD at AUCKLAND on 23rd October 2013

DATE OF DECISION

APPEARANCES

Mr M Hodge, counsel for the Prosecution
Mr D Hoskin, counsel for the Defendant

DECISION OF THE TRIBUNAL

Introduction

[1] In 2011 the complainant, Ms Linda Graham, was shown an apartment at 4A/18 Ronwood Avenue, Manukau by the defendant, Debbie Lovegrove. The apartment was on the fourth floor of a block on the corner of Ronwood Avenue and Davies Avenue in

Manukau City. The charge arises out of the two inspections made by Ms Graham and her son.

[2] The charge provides that:

“1. Following a complaint made by Linda Graham (Complainant), Complaints Assessment Committee 20001 charges the defendant, Debbie Lovegrove, with misconduct under s 73(c)(iii) of the Real Estate Agents Act 2008, in that her conduct consists of a wilful or reckless contravention of Rule 6.4 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009.

Particulars:

In marketing a property at 4A/18 Ronwood Avenue, Manukau (Property), the defendant misled the Complainant in stating that nothing would be built on a site neighbouring the Property for two years and that any building would not impede the view from the Property.”

[3] It was first seen by Ms Graham on 19th February 2011. Ms Graham says that she and her sister Linda Harrison noticed that next to the building on Davies Avenue was a ground level gravel car park. She said that when she viewed the property on the 19th February 2011 she asked Ms Lovegrove if anything was planned to be built on the car park. She says that Ms Lovegrove responded that nothing was planned at present however something could be built on it in about two years time but Ms Graham should not worry as whatever was built would not block her view of Hayman Park.

[4] Ms Graham made an offer to purchase the following day after a second inspection. She settled on 29th April 2011. In June 2011 she discovered that a car park was being constructed on the next door site and that the car park was going to be approximately seven stories high. This obstructed her view to Hayman Park to the west and meant that one of her two balconies had a very obstructed and limited view.

[5] She telephoned Lovegrove Realty Limited who Ms Lovegrove had worked for. She was told how she could make a complaint. She did so.

[6] Ms Lovegrove denies having made this statement as Ms Graham claims. She says that when Ms Graham asked her about the car park next door she said she did not know what was to happen, that it was being used as a carpark at the moment but this could change. She suggested that she could go to Manukau City Council and obtain a LIM report.

[7] The issues for the Tribunal are as follows:

- a. As a matter of fact, did Ms Lovegrove make the statement that Ms Graham complains of?

- b. Did Ms Lovegrove make the statement that Trevor Graham says she made on the following day?
- c. If the answer to either of these questions is yes, then does this behaviour amount to wilful or reckless behaviour so as to lead to a finding of misconduct under s.73 of the Real Estate Agents Act 2008?

[8] Both counsel accept that this is essentially a question which will be determined by the Tribunal after making its own assessment of the credibility of the four witnesses; Ms Graham, her sister Irene Harrison (who accompanied her on the first visit to the property) and her son Trevor Graham (who went back to the apartment with his mother the following day) and Ms Lovegrove herself. The three REAA witnesses all assert that Ms Lovegrove told them that there was no need to worry about the construction next door, that there would be a two year delay and that it would not block Ms Graham's view.

[9] Ms Lovegrove states that these statements are simply not true and that what she told Ms Graham was to obtain a LIM report. She denies making any statement about the car park to Mr Graham.

Linda Graham

[10] Ms Graham reiterated to the Tribunal that Ms Lovegrove told her that the vacant lot would have nothing built on it for two years but that whatever was built there would not obstruct her view. Under cross examination, she accepted that the front balcony has an unobstructed view. She initially said that she did not go outside onto the balcony to have a look at the view but later agreed that she did. She denied that Ms Lovegrove had been suggesting, or could have been suggesting, that "nothing could block the view" was a reference to the view out of the main balcony northwards. She reiterated that she was specifically looking at and directing her attention towards the car parking lot below. She acknowledged that Debbie Lovegrove may have told her to go to the Council but said she took her at her word about what was to be built on the adjacent lot. She acknowledged that she was told that she could get a LIM report but decided not to. She acknowledged that Ms Lovegrove had, as they went out of the property, pointed out the physical proximity of the Manukau City Council where she could go to find out about the property and request a LIM.

[11] She also acknowledged that when she made the offer to purchase the following day she discussed with Ms Lovegrove the LIM report again and said that she did not require the LIM report.

Irene Harrison

[12] Irene Harrison is Mrs Linda Graham's sister. She came to the initial inspection of the apartment and did not directly question Ms Lovegrove herself but said she overheard the conversation between her sister and Ms Lovegrove. She confirmed that Linda asked about the vacant lot and that Ms Lovegrove had said that something would be built on it, that it was at least two years away and that it would not block the view. She did not recall any discussion about the LIM or on the street. She said that she did not hear her sister ask the question but just heard the answer.

Trevor Graham

[13] Mr Graham is the son of Linda Graham. He went to visit the apartment with his mother the day following the initial inspection. He says that he went up to the apartment and was looking down at the empty lot. He asked Ms Lovegrove is anything going to be built there and she said no. He said he did not ask any other questions.

[14] Under cross examination he acknowledged fairly that he might have said did Ms Lovegrove "know if anything was going to be built next door?". However, he considered that both questions were essentially the same and said that he was asking for direct information about what was going to be put on that lot. He denied that his mother had been offered the opportunity to get a LIM report and said that she would have talked to him about that.

Debbie Lovegrove

[15] Ms Lovegrove said that she had been selling real estate for approximately seven years by February 2011 and ceased as an agent in May 2011. She said that this was the first apartment that she had sold in the complex and acknowledged that she had not considered or made any enquiries about the adjoining lot on Davies Avenue. She told the Tribunal that Ms Graham was the only person who showed any interest in the adjacent lot and the only one who asked a question about it. She said had Ms Graham asked her, she would have been happy to make enquiries about the vacant lot but was adamant that she told Ms Graham (in response to the question) that it was being used as a car park at present but that could change. She says that she told Ms Graham that she should go to the Manukau City Council and get a LIM report. She said that, when at street level again, she directed Ms Graham towards the Manukau City offices where she could obtain a LIM report. She said that Mr Trevor Graham did not ask her about the car park.

[16] At 5 o'clock on 20th February she completed an offer agreement where she again raised the question of the LIM report with Ms Graham. She said that Ms Graham said she did not want one and she was happy without one. She completed a transaction report the next day in which she noted that a LIM report had been declined.

Discussion about the evidence

[17] The Tribunal must be satisfied on the balance of probabilities that there is evidence to show that Ms Lovegrove made the statement complained about. A finding of professional discipline is a serious matter and the Tribunal must be satisfied that it has sufficient evidence to reach a finding.

[18] After having heard the evidence of the parties, the Tribunal are not satisfied on the balance of probabilities that Ms Lovegrove made the statements complained about.

[19] There was clearly a discussion about the adjoining lot. Both parties acknowledge this. However, we would have to find that Ms Lovegrove said that there would be nothing built on the property for two years and then it would not obstruct the view to make the serious finding of misconduct against Ms Lovegrove. We cannot be satisfied from the evidence that we have heard that she did make this statement. She was equally adamant that she knew nothing about the property and that obtaining a LIM would help Ms Graham to understand what was proposed for that site. She raised the issue with her again the next day and Ms Graham did not want to obtain a LIM. Having heard all of the parties to this complaint, we cannot be satisfied that the unambiguous statement(s) complained about was made by Ms Lovegrove.

[20] We understand how distressing it is to Ms Graham to find the car park building obscuring her westerly view in this way and we sympathise with her. However, Ms Graham acknowledges that Ms Lovegrove suggested that she obtain a LIM and she decided not to obtain one. That was a decision for Ms Graham to make but it did mean that she did not have the benefit of checking not only about what was going to happen next door but also whether there were any issues with the apartment block itself, eg land stability or watertightness.

[21] Given that Ms Graham now acknowledges that the suggestion was made that she could obtain a LIM in conjunction with the conversation about the car park, we accordingly reach the conclusion that it is more likely than not that the statement made by Ms Lovegrove was more or less as she described it.

[22] In respect of the conversation with Mr Graham, we consider that it is likely that if a conversation did take place, the question was whether or not Ms Lovegrove knew what was going to be constructed next door? The correct answer was "no".

[23] On the balance of probabilities therefore, we conclude that the Real Estate Agents Authority has not proved the charge against Ms Lovegrove. We dismiss the charge.

[24] The Tribunal draws to the parties' attention s 116 of the Real Estate Agents Act 2008.

DATED at AUCKLAND this 11th day of November 2013

Ms K Davenport QC
Chairperson

Ms N Dangen
Member

Ms C Sandelin
Member