BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2014] NZREADT 1

READT 019/12

IN THE MATTER OF	an appeal under s.111 of the Real Estate Agents Act 2008
BETWEEN	**ROGER PAYNE**
	Appellant
AND	**THE REAL ESTATE AGENTS AUTHORITY (CAC 20005)**
	First respondent
AND	**ROBERT GARLICK, LAUREN BULLEN and LORRAINE CLARK**
	Second respondents

MEMBERS OF TRIBUNAL

Judge P F Barber - Chairperson
Ms N Dangen - Member
Mr G Denley - Member

HEARD at WELLINGTON on 7 August 2012, 11 and 12 July 2013 (with subsequent series of subsequent typed submissions)

DATE OF THIS DECISION 15 January 2014

APPEARANCES

The appellant on his own behalf
Messrs R M A McCoubrey and S Wimsett, counsel for the Authority
Mr C Matsis, counsel for second respondent licensees

DECISION OF THE TRIBUNAL

The Issue

[1] Did all or any of the three second respondents licensees fail in their duty to the appellant when, over September 2004 and April 2005, selling 35 Woodhouse Street, Karori, Wellington, under instructions from the Registrar of the High Court at Wellington?

The Material Facts

[2] On 7 September 2004 the High Court at Wellington ordered that the property be sold. It was then co-owned by the complainant and his estranged wife but, at all material times, exclusively occupied by him. The property was sold on 13 April 2005

for $355,000 by way of an agreement for sale and purchase after a tender process executed by and in the name of the Registrar of the High Court. Mr R Garlick and Ms L Bullen were the two licensees then employed by the real estate firm (Leaders Real Estate at Karori) appointed by the High Court to act on the sale of the property.

[3] As it happened, later that year, in August, the purchaser sold the property back to the appellant complainant for $400,000. The September 2005 Quotable Value for the property was $445,000.

[4] In effect, the appellant contends that the licensees discouraged tenders and prevented a proper sales process; and may have had an inappropriate and improper (i.e. unethical) business association with the person who bought the property on 13 April 2005. As the Committee noted, these are extremely serious and grave allegations which were extensively investigated for the Committee. The appellant believes that the licensees acted corruptly, unethically or with deceit, because the price realised on the sale of the property was significantly below the market value of the property at that time.

The Complaints

[5] On 25 November 2011, the appellant summarise his complaint in the Authority's complaint form as follows ("*the REAA complaint*"):

> *"REMAX Leaders in a corrupt unethical and deceitful tender process sold my Karori Wellington home of 26 years at the time in 2005 for an unjust Wellington High Court process to a property speculator Frank Coory for about $100,000 below its market value without REMAX Leaders or Frank Coory inspecting the property or consulting with me. REMAX Leaders unjustly issued a Trespass Notice to stop me from contact with all its Wellington offices (14 in total). When Coory learned of the injustice he sold the home back to me."*

The Outcome at Committee Level

[6] The Committee determined to take no further action for the following reasons:

> *"5.1 … (a) because the length of time that has elapsed between the date when the subject matter of the complaint arose and the date when the complaint was made is such that a further investigation of the complaint (beyond that which has already occurred) is no longer practicable or desirable section 80(1)(a)* [of the Real Estate Agents Act 2008 "*the Act*"]*; and*
>
> *(b) because it appears to the Committee that, having regard to all the circumstances of the case, any further action is unnecessary or inappropriate section 80(2)."*

[7] By way of further background we set out further extracts from the Committee's decision namely:

> *"4.4 … the obvious starting point is that the licensees were acting on the instructions of the Registrar of the High Court, not the complainant. That said, we would accept, in principle, that the licensees arguably owed a duty to the complainant to use appropriate care and diligence in attending to the sale, including obtaining the best possible price. It is important to note, however, that the licensees would, in terms of the processes they*

followed, appear to have acted entirely correctly in terms of their appointment by the High Court.

4.5 The obtaining of a price substantially below the market value of a property might possibly be consistent with a failure by a real estate agent to conform to a relative industry standard – or, on the other hand, any number of other things. In this case, the context of the sale is crucial. This was the forced sale of a property following a matrimonial dispute.

...

4.8 It is also noted that at the point in time when the person who bought the subject property ultimately took possession, the attendance of the police was required in circumstances that the complainant himself, perhaps revealingly, refers to as "the siege". In conditions such as these, the sale of the property at a price substantially below its market value is not only not surprising but also, almost inevitable.

4.9 There is no tenable or adequate evidence placed before us of the licensees not seeking, to the very limited extent this was practical, the best price for this property and even less, which is to say really none at all, of the licensees deliberately acting against achieving an optimum sale. Quite apart from anything else, it would be quite inexplicable for the licensees to have acted in the manner the complainant suggests because that would have been contrary to their basic economic self interest. All that the complainant can suggest in terms of some kind of motive or reason for the licensees to have acted in the way he is contending is collusion of some kind between them and the eventual purchaser. However, there is simply no evidence to sustain any such assertion. The overall view of this case that the Committee is driven to is that if the complainant did suffer loss as a result of the events in question, then he, the complainant, must look to himself for the explanation for that.

4.10 This Committee has, as would be apparent from the discussion above, resolved to not take any further action with regard to this complaint and, in particular, not to inquire into it, or at any rate, inquire further. We do so partly and firstly because this matter has already been the subject of a considerable investigation and for the reasons already given, there are no real or substantial grounds of potential misconduct or unsatisfactory conduct sustained (or sustainable) by the complainant that would justify further inquiry.

...

4.13 The subject matter of this complaint relates to a series of events that began in late 2004, more than 7 years before the making of the complaint to the Real Estate Agents Authority (the Authority). In this regard, we do acknowledge that there was a complaint made to the Real Estate Institute of New Zealand (REINZ) in April 2005. That body advised by letter dated 12 April 2005 that it was not proceeding with an investigation of the complaint then before it "until the civil proceedings currently (i.e. as at April 2005) before the courts have been resolved". From the advantage of hindsight, it might have been helpful if, in 2005, the Institute had at least made some inquiry into this matter. That said, its decision was, in the

> *circumstances, understandable and that body clearly left it open to the complainant to refer his complainant back to the Institute once the proceedings he had initiated had been "resolved" or simply not taken further. Equally, the current legislation has been in force since November 2009 and the complainant had over 2 years since then to place his concerns before the Authority. For the reasons given above i.e. the dimming of recall and the understandable disposal of paper, we believe that there is or would be a real risk of prejudice to the licensees if this complaint were to proceed any further."*

[8] In deciding to take no further action the Committee noted that the context of a matrimonial dispute was "*crucial*". It found the evidence before it to show "overwhelmingly" that the appellant refused to allow any prospective purchasers to enter the property. It noted that Police attendance was required when the purchaser took possession. It found that there was no tenable evidence that the licensees did not seek the best price for the property nor that there was any evidence whatsoever to sustain the appellant's assertion that there was collusion between the licensees and the purchaser.

[9] The overall view of the Committee was that if the appellant suffered loss as a result of the events described above, then he must look to himself for the explanation for that and that there were no real or substantial grounds of potential misconduct or unsatisfactory conduct by the real estate agents involved. Perhaps a little curiously, the Committee also considered that due to the elapsed time between the alleged conduct and the laying of the complaint "*there is or would be a real risk of prejudice*" to the licensees if the complaint were to proceed.

[10] The second respondents accept that they did not conduct open homes or show prospective purchasers through the interior of the property at 35 Woodhouse Street, Karori. Ordinarily, such an approach could reasonably be described as deficient. However, it is submitted for the Authority that it was open to the Committee to conclude that the sale was conducted in this way due solely to the actions of the appellant.

Further Background

[11] There is a decision of the Court of Appeal in *Payne v Payne* CA 239/04, 25 May 2005, which gives an overview of the history of the matter that led to the forced sale of the property. We note the following portions of the judgment:

> *"[11] The High Court put in place a tender procedure for the sale of the former matrimonial home. This process was necessarily affected by Mr Payne's adamant opposition to, and unwillingness to co-operate with, the sale. This meant there were major limits to the marketing which the real estate agents could carry out.*
>
> *[12] Selling a house in this way is not likely to result in its full value being achieved.*
>
> *...*
>
> *[16] We accept that Mr Payne can point to features about the sale process which are unusual but given that these are by way of response to his policy of non-cooperation, this seems to be of peripheral significance. His complaint*

about the sale is simply another manifestation of his refusal to recognise the judgment which is being enforced. In effect, by challenging the sale, he was trying to challenge collaterally a final judgment. This is not permissible. So we agree with Mackenzie J that the challenge to the sale was an abuse of process."

[12] A full narrative of the litigation history is contained in the Court of Appeal's earlier decision in *Payne v Payne* CA 239/04, 17 February 2005.

Timeline

[13] Counsel for the Authority, very helpfully, prepared the following timeline of relevant events based upon the Court of Appeal decisions referred to above and the agreed bundle of documents:

- **7 September 2004:** Order made by Ellen France J for the sale of the property at 35 Woodhouse Avenue, Karori.

- **11 October 2004:** Ellen France J stayed the order on her judgment until 5pm on 18 October 2004.

- **18 December 2004:** The appellant wrote to the Registrar of the High Court and to Ms Bullen at Leaders Real Estate. The bold heading at the top of the letter states: *My fully paid for home is not for sale."* The letter proceeds to contest the lawfulness of the High Court decision to put the property up for sale.

- **Late 2004:** The property was marketed by Leaders Real Estate and offered for sale by tender. The tenders were to close on 27 January 2005. However, the appellant obtained an injunction and the sale was placed on hold.

- **3 February 2005:** Mackenzie J directed the Registrar not to take steps to consider or accept tenders before 5pm on 14 February 2005, the date allocated for the appellant's appeal to the Court of Appeal.

- **6 February 2005:** The appellant wrote to REINZ. The letter repeats the phrase: *"My fully paid for home is not for sale"*.

- **17 February 2005:** The Court of Appeal dismissed the appellant's application for a stay of the orders made by the High Court of 7 September 2004 and ordered that the temporary stay granted by Mackenzie J expire on 3 March 2005.

- **March 2005:** The property was reoffered for sale, again by tender, this time with the tenders closing on Wednesday 13 April 2005.

- **8 March 2005:** Leaders Real Estate issued the appellant with a trespass notice referring to his *"recent behaviour and disruption at Leaders office at 136 Karori Road, Karori"*.

- **9 March 2005:** The appellant wrote to REINZ making a formal complaint against Leaders Real Estate, Lorraine Clark and Rob Garlick.

- **13 April 2005:** The tender closed and an agreement for sale and purchase was entered into between the Registrar of the High Court and Mr Frank Coory for a purchase price of $355,000.

- **Prior to the close of the tender:** Leaders Real Estate advertised the property in the *"Property Press"* magazine and placed the property on their website: www.leaders.co.nz.

- **28 July 2005:** Supreme Court refuses the appellant's application for leave to appeal the decision of the Court of Appeal.

Stance of the Authority

[14] It is correctly put by the Authority that upon considering the Court of Appeal judgments and documents above, as well as the evidence of witnesses, the following is clear:

[a] There was a protracted matrimonial legal dispute leading to the High Court ordering the sale of the property.

[b] The appellant did not agree with that decision.

[c] The appellant made it abundantly clear to the second respondents that he did not deem his house to be for sale nor accept that any forced sale was lawful.

[d] There were issues between him and the second respondents to the extent that on 8 March 2005 a trespass notice was issued against him that he not enter the business premises of Leaders Real Estate Ltd, Wellington.

[e] Leaders invited tenders and advertised the exterior of the property but, due to the attitude of the appellant, were unable to display photos of the interior or show people through the interior of the property.

[15] It is also put for the Authority that it may well be that the marketing of this property could be described as unusual (or, indeed, *"crazy"*), but on the evidence it is unfair to blame the second respondents for any of that. It is submitted that any charges against the second respondents must fail, particularly, in light of the conclusions reached by the Court of Appeal.

[16] Insofar as the appellant took exception to the second respondents informing prospective buyers that the sale was a complicated situation involving an acrimonious legal dispute, counsel for the Authority submits that had the second respondents not told prospective purchasers of the reality of the situation, they would have been the subject of a complaint or complaints from those prospective buyers – who would fairly have expected to have been told such information.

[17] Counsel for the Authority also notes that, pursuant to the 7 September 2004 order of Ellen France J, the proceeds of the sale were to be applied firstly to the entitlement of the appellant's ex-wife, and that she has made no complaint against the second respondents. It is also noted that the Registrar of the High Court, as the person responsible for the sale, made no complaint against the second respondents. It is put that both the appellant's ex-wife and the High Court (and Court of Appeal) would have been aware of he unusual marketing of the property. Counsel for the

Authority also submits that the fact that no complaint was made by them to Leaders, or about Leaders, clearly suggests that they saw the appellant as responsible for the method of marketing.

[18] Mr McCoubrey further submits that all of the above must mean that were charges of misconduct to be laid by the Authority against the second respondents or any of them, there would be no prospect of their successful prosecution so that this appeal against the Committee's decision to take no action against them should be dismissed.

Available Remedies to the Appellant

[19] The complaint made by the appellant relates to conduct in 2004/2005. The Real Estate Agents Act 2008 came into force on 17 November 2009.

[20] Section 172 of that Act is the transitional provision relating to allegations about conduct which occurred before the commencement of the Act. By virtue of s.172(1), we have jurisdiction to hear misconduct charges against licensees in respect of conduct alleged to have occurred before the commencement of the Act, if at the time of the conduct, the licensee could have been complained about, and the licensee has not been dealt with in respect of that conduct:

> ***"172 Allegations about conduct before commencement of this section***
> *(1) A Complaints Assessment Committee may consider a complaint, and the Tribunal may hear a charge, against a licensee or a former licensee in respect of conduct alleged to have occurred before the commencement of this section but only if the Committee or the Tribunal is satisfied that,—*
> *(a) at the time of the occurrence of the conduct, the licensee or former licensee was licensed or approved under the Real Estate Agents Act 1976 and could have been complained about or charged under that Act in respect of that conduct; and*
> *(b) the licensee or former licensee has not been dealt with under the Real Estate Agents Act 1976 in respect of that conduct.*
> *(2) If, after investigating a complaint or hearing a charge of the kind referred to in subsection (1), the Committee or Tribunal finds the licensee or former licensee guilty of unsatisfactory conduct or of misconduct in respect of conduct that occurred before the commencement of this section, the Committee or the Tribunal may not make, in respect of that person and in respect of that conduct, any order in the nature of a penalty that could not have been made against that person at the time when the conduct occurred."*

[21] In essence, the effect of s.172 is to create the following three step process in respect of allegations about a licensee's conduct which occurred prior to 17 November 2009:

[a] Could the licensee have been complained about or charge under the 1976 Act in respect of the conduct?

[b] If so, does the conduct amount to unsatisfactory conduct or misconduct under ss.72 or 73 of the 2008 Act?

[c] If so, only orders which could have been made against the licensee under the 1976 Act in respect of the conduct may be made.

[22] Pursuant to the 1976 Act, in appropriate circumstances the Licensing Board had the power to make three types of disciplinary orders, namely:

[a] An order cancelling the salesperson's licence;

[b] An order suspending the salesperson's licence for a period not exceeding three years;

[c] An order imposing a monetary penalty.

[23] Significantly, compensation was not an available remedy under the 1976 Act and is, therefore, not an available remedy in this case.

Discussion

[24] The evidence before us was very detailed as were the submissions, although the three licensees did not give evidence, and with quite some confrontational aspects. Much of the appellant's evidence was only of peripheral relevance and it does not assist to detail it.

[25] Essentially, the appellant alleges that there was an unjust sales process used by the second respondents to sell his home and that, in particular, they discouraged tenders (and tenderers) and, eventually, ran "*a very improper tender behind my back*".

[26] The issue before us is simply whether or not the Committee was plainly wrong to conclude that no further action should be taken against the licensees rather than laying charges of misconduct against them – as sought by the appellant. Of course it was open to the Committee, and is open to us to find unsatisfactory conduct by a licensee.

[27] It is settled law from *K V B* [2010] NZSC 112, [2011] to NZLR 1 that the approach we must adopt on appeals from discretionary decisions, as compared to that taken on general appeals, is:

> "[*32] … for present purposes, the important point arising from Austin*, *Nichols* is *that those exercising general rights of appeal are entitled to judgment in accordance with the opinion of the appellate court, even where that opinion involves an assessment of fact and degree and entails a value judgment*. *In this context a general appeal is to be distinguished from an appeal against a decision made in the exercise of a discretion. In that kind of case the criteria for a successful appeal are stricter: (1) error of law or principle; (2) taking account of irrelevant considerations; (3) failing to take account of a relevant consideration; or (4) the decision is plainly wrong. The distinction between a general appeal and an appeal from a discretion is not altogether easy to describe in the abstract. But the fact that the case involves factual evaluation and a value judgment does not of itself mean the decision is discretionary*."

[28] We have previously held that we will adopt this narrower approach when considering appeals from s.80 decisions (i.e. a decision of a Committee of the Authority to take no action on a complaint).

[29] In *Smith v CAC 10027* [2010] NZREADT 13 we held:

> *"[13] When considering appeals from decisions in which the Committee has exercised its discretion under ss.80 or 172, the Committee submits the Tribunal should adopt the narrower approach contemplated by the Supreme Court in Kacem v Bashir, in other words, appeals to the Tribunal from decisions made in the exercise of a Committee's discretion can only succeed if the appellant can show that the Committee either made an error of law or principle, failed to take into account a relevant consideration, took into account irrelevant considerations, or was plainly wrong.*
>
> *[14] The Tribunal accepts that the decision of the Committee is a discretionary one and it should therefore follow Kacem v Bashir."*

[30] Accordingly, any appeal against a determination under s.80 is a limited one. This is more so when the matter in issue is the discretionary decision whether to lay charges.

[31] We have previously considered appeals against CAC determinations to take no further action and have, on occasion, modified the determinations under appeal and directed that misconduct charges be referred.

[32] Before a Committee can lay a charge, it must have sufficient evidential basis in order to consider that there are grounds to lay a charge. It must be satisfied that there is a *prima facie* case of misconduct against a licensee.

[33] Ms J L Moss acted in a McKenzie friend role to the appellant and also gave evidence. She is clearly a witness of integrity. Although she was a colleague of the appellant when he was a diplomat, she seems to have an interest in professional complaint regimes. Her views seem to be that the second respondents did not handle the tender process for the sale of the appellant's property correctly and that we should consider what lessons can be learnt from this case.

[34] In a balanced manner, Ms Moss gave detailed and helpful views on the seeming facts of this case and the stance of the appellant. *Inter alia*, she believed that neither the appellant nor she "*knew what was going on*" in terms of the marketing process adopted by the second respondents, that the appellant was left totally in the dark as to what was happening to his home, and that he should have been kept closely informed.

[35] We note that themes of the appellant's evidence were that no one contacted him about the sale process, that he did not cause any problems, and that the sale was done "*behind my back with no hints given to me*".

[36] Another theme in the appellant's evidence was that it was Mr Garlick who, allegedly, intentionally stopped the appellant communicating with Leaders by the issue on 8 March 2005 of the trespass notice from any Leaders' office in Wellington as referred to above.

[37] The property was sold on 15 April 2005, according to the appellant, for about $110,000 below its fair market value. The appellant emphasised that, seemingly, from 8 March 2005 to that sale date, there was no contact with him.

[38] *Inter alia*, the appellant maintains that no prospective buyer asked to see his home and no one asked him for a key even upon the property having been sold. It seems that this led to the purchaser breaking his way into the property and, initially, being removed by the Police because he could not then show ownership papers.

[39] In his various submissions to us, the appellant took issue with most submissions for the Authority and the second respondents. He considered that misconduct was perpetrated against him not only by the three second respondents referred to above, but also by the Leaders salesperson Lucy Sheridan at material times.

[40] Naturally, the appellant agreed with a statement made by Mr Matsis, as counsel for the second respondents, that those licensees might still owe a duty to the appellant to use appropriate care diligence in attending to the sale. However, the appellant is of the view that there was malice on the part of those second respondents against him. In relation to that allegation, he put it that the licensees had every opportunity to refer back to the High Court for further directions "*when they knew about the sale appeal process*". In that latter respect, the appellant must have been referring to the fact that, at all material times, he was still pursuing an appeal to the Court of Appeal regarding, *inter alia*, the property being sold as matrimonial property.

[41] *Inter alia*, the appellant emphasised that a proposition put by counsel for the second respondents, i.e. that the appellant could have continued to deal with them in writing after the trespass notice was issued, is unrealistic because the appellant interpreted the trespass notice as a requirement that he no longer communicate with the second respondents.

[42] Generally speaking, the appellant has submitted that the Committee did not conduct a fair enquiry into this situation; that there is a high possibility that the agents at Leaders only dealt with Mr Frank Coory knowing him as a property speculator so the appellant alleges; that he was not asked to provide access to his home at material times; and that Mr Garlick deliberately stopped dialogue with him, the appellant, by way of the 8 March 2005 trespass notice when a plainly wrong sale process was underway; and that the agents did not obtain the optimum sale price for him.

[43] Mr Matsis, of course, provided very detailed and thoughtful submissions. He particularly submitted that the appellant may only succeed in his appeal before us if he can show that the determination of the Committee was wrong in one of the four ways identified in the *Kacem* and *Smith* cases.

[44] Mr Matsis submits that there is no *prima facie* evidence of corrupt, unethical or deceitful behaviour by any respondent and that the appellant's claims that the agents refused to allow prospective purchasers to view the property are not credible.

[45] Mr Matsis noted that the appellant admits that, as late as 12 April 2005, he made it clear to all concerned that his home was not for sale.

[46] Mr Matsis referred to a number of documents as showing the extent to which both the High Court and Leaders kept the appellant updated on the sale process and the number of times that they asked him for access to the property for appraisal purposes.

[47] The appellant could not have doubted that if he did not pay a judgment debt to his wife by 3 May 2005, his home would be sold through the High Court. A 28 October 2004 letter to him from the Registrar of the High Court spells the situation out including that access to the property will be required by local real estate agents. The appellant was sent a copy of the Registrar's letter of 17 November 2004 appointing Leaders to sell the property. On 22 November 2004 the Registrar wrote to the appellant about the land agents' need for access to the property and advising that the sale would proceed "*with or without your co-operation*". There is a letter of 3 December 2004 from the Registrar to the appellant setting out the consequences of him not doing so. Such correspondence continued through to 24 March 2005, when a letter dated 24 March 2005 was delivered to the appellant's letterbox by Ms Bullen, requesting access to his house at the property. The appellant admitted that under cross examination. Until that point, the appellant had been asserting that the sale took place without his knowledge and without an opportunity to let the agents through the property.

[48] Mr Matsis noted Mr Payne saying in cross examination that he would have allowed access once the Court processes had run their course but there was no way he would co-operate with Leaders before then. Mr Matsis referred to the Court of Appeal observing in their decision of 25 May 2005 that Mr Payne was set on blocking any sale.

[49] Mr Matsis submitted that the appellant's claim that the agents never asked him to take prospective purchasers onto the property, or into the house, is not credible and is inconsistent with his statements to the Authority's investigator, with contemporaneous documentation available to us, and with various Court decisions. Mr Matsis had asked the appellant directly "*Did you allow access to the property*?". The appellant answered "*There was no question of me allowing access to the property because I didn't know anything about this going on*".

[50] The property was sold on 15 April 2005 and was advertised for sale until one week before that. The appellant had managed to delay a sale in January and February 2005 by applying for an injunction so that (Mr Matsis submitted) he clearly knew of the intended sale in January/February 2005.

[51] Mr Matsis had also asked the appellant "*So were you ever contacted to ask if prospective purchasers could view the property*?". The answer given to the appellant was:

> "*There was an opportunity partly of that nature, when Ms Lauren Bullen on explaining that they had this role from the Court to sell this place, I said but hold on, that's all under challenge. There are registered appeals against this, this should never be happening, this is premature* …".

Mr Matsis puts it that response is an admission by the appellant that Ms Bullen did ask him to allow prospective purchasers to view the property and that he refused. There is also evidence that Ms Bullen had told the appellant that his stance would impact on the sale price to be obtained by the agency.

[52] As Mr Matsis also says, there is no evidence to suggest that the appellant contacted the agents in March 2005 or later to say that, having failed in his legal challenges, he would now agree to prospective purchasers having access to the property. Mr Matsis submits that we should infer that the appellant knew by 18 March 2005 that the sale would proceed because he had exhausted all appeal

options at that stage; but we must also infer that he had no intention of co-operating with the sale ordered by the High Court.

[53] Mr Matsis also puts it that the appellant knew his property was being advertised for sale in March and April 2005 and that neither the agents nor any prospective purchasers had been into the property, but he chose to do nothing about it and it is not credible to now blame the agents for difficulties created by him.

[54] The appellant has sought to add Lucy Sheridan as a respondent in this case on the basis that she introduced the purchaser, Mr Coory, to the property. However, she was not a party to the appellant's original complaint and we do not permit that she be added at this stage. In any event, there is no evidence before us of any wrongdoing on her part.

[55] It is puzzling that the appellant is saying he was not asked to provide access. The very clear inference is that he would not provide access. However, we are conscious that the second respondent agents have not given evidence to contradict what the appellant has asserted. Having said that, in the context of all the evidence, we do not find at all credible the appellant's evidence that he never blocked access to the agents or prospective purchasers. The documentary evidence shows that the appellant well knew what was happening regarding the sale of this property at material times, but he turned his back on that process.

[56] After the initial part-hearing of the appellant's evidence on 7 August 2012, our preliminary view was an inclination that all three licensees be charged with misconduct, but we have subsequently heard further evidence and submissions, and have concluded otherwise.

[57] The second licensees were directed/ordered by the High Court to sell the property, as matrimonial property, at the end of an acrimonious matrimonial property dispute involving much litigation. The appellant (the husband) would not cooperate with the marketing of the property on behalf of the High Court and strenuously tried to block the sale we have referred to (or any sale of the property). Accordingly, that sale took place with substandard marketing in terms of common business sense. However, that situation was not caused by any of the agents but by the appellant himself. Accordingly, we confirm the view of the Committee that there be no further action taken on the complaint. In other words we dismiss the appellant's appeal to us.

[58] Having said that, while we endorse the thoughtful findings of the Committee, it needs to be understood that, rightly or wrongly, the appellant has been involved over a long on-going traumatic matrimonial experience which culminated in his home being sold against his will. He still lived in that home and had enjoyed it for many years previously. His rather sad efforts to block or delay that sale under the auspices of the High Court have led to these proceedings against three real estate agents who were simply acting on instructions of the Registrar of the High Court at Wellington.

[59] Perhaps, the licensees (the second respondents) could have been more kid-gloved in their handling of the sale and its general marketing in terms of the particular background. While we accept that the appellant contributed to the sad situation of his home being sold far too cheaply and on a ridiculous basis of sight unseen, or house uninspected by any prospective purchaser, the agents did not cause that situation and were merely doing their duty. However, they had become involved in a real-life human drama with an unusual and financially foolish stance being taken by

the appellant. He should have been treated with respect rather than as an obstacle. It is rather heart-warming that the purchaser, who financially reaped the advantage of this unfortunate mess by buying the property very cheaply, after quite a short time sold it back to the appellant on relatively reasonable terms in all the circumstances.

[60] With hindsight, rather than being set on doing business and obtaining commission, even at the direction of the High Court, perhaps the agents should have perceived a human tragedy in progress. Then, they might have arranged for a mediation process or at least made a better effort to avoid the curious situation of a fine residential property being sold without a sensible marketing process.

[61] Agents must seek the best available terms of sale for a vendor whether acting on instructions from the High Court or in the context of a matrimonial dispute, or whatever.

[62] It is understandable that the appellant hindered the sale process; but we do not think it "*almost inevitable*" (as the Committee put it) that the property be sold "*at a price substantially below its market value*". With hindsight, Leaders could have gone back to the High Court Registrar for further directions due to the bizarre situation which had developed. Mr Garlick seems to have been in charge of the marketing of this property and the supervisor of the other agents involved, so he could have taken that initiative.

[63] However, for the reasons we have set out above, i.e. essentially, that the appellant brought upon himself the situation he complains about; this appeal is dismissed.

[64] 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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Ms N Dangen
Member

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Mr G Denley
Member