

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2014] NZREADT 29

READT 008/10

IN THE MATTER OF charges laid under s.91 of the
Real Estate Agents Act 2008

BETWEEN **REAL ESTATE AGENTS**
AUTHORITY (CAC 10020)

Prosecutor

AND **JULIE ANNE McDONALD** of
Ashburton, real estate agent

Defendant

MEMBERS OF TRIBUNAL

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

SUBSTANTIVE DECISION ON GUILT ISSUED 17 October 2013 ([2013]
NZREADT 89)

DATE OF THIS DECISION ON PENALTY 17 April 2014

COUNSEL

Mr L J Clancy for prosecution
Messrs R A Kay and D A Webb for defendant

DECISION OF THE TRIBUNAL ON PENALTY

Introduction

[1] At a hearing on 3 October 2013, in the absence of the defendant, we heard evidence from six witnesses and a bundle of documents was produced. Having considered that evidence, we gave an oral decision finding three charges proved as misconduct under s.73(a) of the Real Estate Agents Act 2008 (Act) but reserved our detailed reasoning which we issued on 17 October 2013 as *CAC v McDonald* [2013] NZREADT 89.

[2] On 3 October we found proved allegations that Ms McDonald:

- [a] forged the signature of a former client on a listing agreement; and
- [b] relied on that forged document to claim commission on the sale of a property; and

[c] relied on that forged document to lodge a caveat on the property.

[3] We then invited submissions on the issue of penalty. After the lunch adjournment on 3 October 2013, we heard oral submissions on penalty and gave an indication of our current thinking on that issue, but stated that our final decision on penalty would be provided later (with reasons) in writing.

[4] Subsequent to the hearing on 3 October, the defendant re-engaged with these proceedings. She is now represented by counsel and had filed an appeal against our misconduct findings, which we were advised on 27 March 2014 has been withdrawn. She asserted her right to be heard by us on the issue of penalty.

[5] Accordingly, a penalty hearing took place before us at Ashburton District Court on 6 March 2014. That led to us then giving an interim decision on penalty which was subject to our providing reasons for our penalty orders.

[6] We then noted that it was difficult to argue against the submission for the prosecution that the defendant's offending required cancellation of her licence. However, we stated that having analysed all the detailed factors put to us by counsel that day, and in prior written submissions, perhaps we could regard this particular situation of the defendant's as borderline in terms of whether her licence ought to be cancelled. We stated also that, if we regarded the appropriate penalty as that of a period of suspension of the defendant's licence, then a high level of suspension was required.

[7] We then concluded our remarks making it clear that we would carefully formulate our reasons for this serious situation but that, with considerable misgivings, we had unanimously decided not to cancel or revoke the defendant's licence but to suspend it for three years from 6 March 2014; and we also imposed a fine of \$5,000 against the defendant to be paid by her to the Registrar of the Authority in Wellington within two calendar months from 6 March 2014.

[8] At this point we record that all counsel, very helpfully, analysed a number of case authorities with a view, on the part of the defence, that we might be able to conclude that suspension was appropriate rather than cancellation, and vice versa on the part of Mr Clancy for the prosecution. Having decided not to cancel the defendant's licence, and bearing in mind the current proceedings before the High Court, we at first saw little point in this stage in analysing the various case authorities put to us on the issue of the need or otherwise for revocation of the defendant's licence. In any case, we consider that the particular facts of this case are paramount in endeavouring to make appropriate penalty orders. However, we have covered a number of cases below in terms of submissions from counsel on parity of sentencing.

A Summary of the Submissions for the Defendant on Penalty

[9] Mr Webb submits that the charges against the defendant relate fundamentally to a single wrong, namely, the forgery of a signature on a listing agreement. He puts it that the two subsequent charges relate to actions taken by her in reliance on the forged documents so that the core wrong is the forgery of the signature on the listing agreement.

[10] Mr Webb noted that we found the factual allegations of the prosecution to be proved and noted that the following particulars amounted to misconduct:

- [a] The forgery of the signature of Rata Jared Kamau, then the holder of Waddoup David Kamau's power of attorney, on a document headed "*Ashburton Real Estate Limited Ltd (MREINZ) Listing Authority for Sale*", by or with the knowledge of the defendant.
- [b] The defendant's reliance on a document headed "*Ashburton Real Estate Limited Ltd (MREINZ) Listing Authority for Sale*", knowing and/or on notice that it was not a genuine document, to claim commission on the sale of Waddoup David Kamau's property at 2/14 Ascot Place, Ashburton.
- [c] The defendant's reliance on a document headed "*Ashburton Real Estate Limited Ltd (MREINZ) Listing Authority for Sale*", knowing and/or on notice that it was not a genuine document, to lodge a caveat on the title of Waddoup David Kamau's property at 2/14 Ascot Place, Ashburton.

[11] Mr Webb noted that, at paragraph [47] of our written decision, we stated:

"What is alleged against the defendant is deliberate dishonesty, forgery, and use of a forged document to assert an entitlement to commission. Prima facie that conduct is at the more serious end of the range likely to come before us".

[12] On that basis, the submissions on penalty were made for the defendant. The defence accepts our findings that forging a signature on a listing agreement, and taking steps in reliance on that document is a serious wrong; but sought a period of suspension in the case of the defendant.

[13] Mr Webb submits that, in light of our finding of misconduct, the core of the issue is whether:

- [a] by reason of that misconduct it is in the interests of the public that the defendant's licence be cancelled (refer s.94(1)(b) of the Real Estate Agents Act 1976); or
- [b] the defendant has been shown to be of such a character that it is in the interests of the public that the licence be cancelled (s.94(1)(a) of that 1976 Act).

[14] Mr Webb puts it that in addressing the question of whether it is in the public interest to cancel the defendant's licence, it is appropriate to traverse not only the offending and its circumstances, but also wider matters including both prior and subsequent conduct of the defendant.

[15] In summary, Mr Webb submitted that an order cancelling the defendant licence is not necessary and that a lesser order is appropriate because:

- [a] the conduct of the defendant was not a sustained course of conduct and was not aimed in any way at depriving or undermining the interests of any party;
- [b] rather, her conduct was isolated and, while details of motive are not available, appears to have been rash and opportunistic rather than premeditated;

- [c] once the defendant became aware that the hearing had taken place before us on 3 October 2013, she responded to our Registry about her concerns and engaged counsel to assist her;
- [d] the defendant has an otherwise unblemished professional disciplinary record and strong character references which demonstrate that she is of good character so that cancellation of her licence is not required to protect the public interest.
- [e] the defendant fully appreciates the seriousness of the finding that has been made against her and has experienced its impact, not least due to media coverage, of both professional and personal levels; and
- [f] that looking at those of our other decisions which concern the falsifying of documents, parity would require an order of less than cancellation.

[16] Mr Webb also submitted that the purpose of disciplinary sanctions is protective rather than punitive and that, for this reason, the Courts have adopted the least restrictive outcome principle to ensure that the least punitive order is made which is consistent with protection of the public. Mr Webb noted that in *Daniels v Complaints Assessment Committee 2 of the Wellington District Law Society* [2011] NZAR 639 (HC), at paras 22 and 24, concerning a lawyer, that it is proper to consider all possible orders short of striking off which are consistent with the need to protect the public and to properly respond to the wrongdoing. There, the High Court stated:

“If the purposes of imposing disciplinary sanctions can be achieved short of striking off then it is the lesser alternative that should be adopted as the proportionate response. That is “the least restrictive outcome” principle applicable in criminal sentencing. In the end, however, the test is whether a practitioner is a fit and proper person to continue in practice. If not, striking off should follow. If striking off is not required but the misconduct is serious, then it may be that suspension from practising for a fixed period will be required.”

[17] Mr Webb noted it is self evident that an order of cancellation would deprive Ms McDonald of her means of livelihood and support and submitted, therefore, that should be avoided if it possibly can.

[18] He put it to be therefore proper to consider all possible orders short of cancellation which are consistent with the need to protect the public and to properly respond to the wrongdoing; and submitted that, in the circumstances, a period of suspension of the defendant is sufficient to reflect the serious nature of the charges, yet recognise the mitigating factors relating to her character and the nature of the offending.

[19] Mr Webb also submitted that the defendant is a person of good character is borne out by a number of references which he adduced to us on her behalf. Certainly, the references support that the defendant is otherwise a person of good character, a dedicated and efficient real estate agent, and a community-minded person who is regarded as having a direct and honest manner. She has been a real estate agent for 16 years and, apart from this current matter, there do not seem to have been any complaints or disciplinary issues regarding her.

[20] Inter alia, Mr Webb emphasised that the defendant unreservedly accepts that forgery is a very serious matter but, currently, is unable to offer remorse because she

maintains that she did not forge the disputed signature on the listing agreement and has taken the issue of guilt on appeal to the High Court. The defence also submits that she does not present any ongoing danger to consumers.

[21] Mr Webb also dealt with the question of motive. Essentially, he seemed to be putting it that it is inappropriate to now speculate what led to her conduct now in issue. He then surmises that the motive would not have been the securing of a commission because the vendor's attorney had excluded the defendant from the sale of the property. Mr Webb seemed to be also surmising that the defendant was disorganised at the time and thought that the vendor's attorney had agreed to the property being listed with her for sale, rather than as merely to obtain a tenant for it. Mr Webb adds:

"53. She may have thought that the agreement was oral and that Mr Kamau was simply dilatory in responding to her emails. She then (inappropriately and dishonestly) forged the signature rather than going to the inconvenience of obtaining the necessary signature from Mr Kamau.

54. On such an approach the conduct would be motivated by laziness and poor systems, but not by a wish to deprive Mr Kamau senior of any entitlement. Rather it was putting in place an arrangement that she thought existed, but doing so by an inappropriate means."

[22] Mr Webb then put it that the defendant's conduct was not planned and calculated, but undertaken in an environment of considerable confusion as to what were her instructions from Mr Kamau so that she had been rash, hasty, or opportunistic rather than scheming, calculated, or part of a plan to deceive and deprive. He emphasised that, because she is appealing our decision on guilt, she is precluded, in his view, from giving evidence as to motive or the circumstances surrounding the material events.

[23] In very helpful and extensive oral submissions Mr Webb, with the help of Mr Kay, covered the above ground and emphasised their submission that the defendant had simply committed an isolated incident of forgery which was quite out of character for her and simply did not add up in terms of motive. They put it that she did not obtain financial advantage from the offending conduct and, as an intelligent woman, could not have thought that the forgery would not be queried. They state from the bar that this case has caused "awful" publicity in Ashburton for the defendant and has been devastating for her business as a real estate agent.

[24] Mr Webb submitted that where a wrong can be seen as isolated, unsophisticated and opportunistic (as in the present case), our protective function will be satisfied by a period of suspension. He submitted that there is no evidence that the wrongdoing in the present case was intended to deprive any person. We reject those particular submissions for reasons covered in our substantive decision.

The Stance of the Prosecution

[25] Mr Clancy, very helpfully, covered relevant background and then made submissions that cancellation of the defendant's licence is the appropriate penalty. We now set out much of what he put to us.

[26] It is well established that penalty decisions of disciplinary Tribunals should emphasise the maintenance of high standards and the protection of the public

through specific and general deterrence. While this may result in orders having a punitive effect, this is not their purpose – refer *Z v CAC* [2009] 1 NZLR 1; *CAC v Walker* [2011] NZREADT 4.

Conduct Prior to the Act Coming into Force

[27] The conduct found proved in this case occurred between February and June 2009, before the Act came into force on 17 November 2009.

[28] Section 172 of the Act therefore applies and it allows us to consider whether conduct before the Act came into force amounts to misconduct under the Act, subject to a limit that only penalty orders available under the previous legislation may be imposed: *Kumandan v REAA* [2012] NZHC 3555.

[29] At the time of the conduct found proved, the defendant was a licensed agent under the Real Estate Agents Act 1976. The relevant provisions on penalty under the 1976 Act were those set out at ss.94 to 96 of the 1976 Act. Those provisions allowed for an agent's licence to be cancelled, suspended for a period of up to three years and a financial penalty of no more than \$5,000.

[30] The grounds on which a licence could be cancelled or suspended were set out at s.94 of the 1976 Act and, relevantly, at s.94(1)(b), it was grounds for cancellation or suspension if the licensee was found guilty of misconduct in the course of his or her business as a real estate agent and that, by reason of that misconduct, it was in the interests of the public that the licence be cancelled.

[31] A separate ground for cancellation, under s.94(1)(c) of the 1976 Act, was that the licensee had been shown to the satisfaction of the Board to be of such character that it was in the interests of the public that the licence be cancelled.

[32] The question of character was also relevant to the test under s.99 of the 1976 Act relevant to decisions to cancel or suspend a certificate of approval granted to a salesperson.

[33] The Committee submits that whether the character test is applied under s.94(1)(c), or the question of penalty is addressed solely on the basis of misconduct under s.94(1)(a), the tests for cancellation or suspension are clearly met in this case.

[34] The case of *Sime v Real Estate Institute of New Zealand & Anor* M73/86 HC Auckland, 30 July 1986, was the leading authority on the application of the character test under the 1976 Act. *Sime* mandated a two-stage test, first, an inquiry into the licensee's character in the sense of personal qualities that might reflect on honesty and integrity and, second, an assessment of whether it was in the public interest that a certificate or licence be cancelled. Traits such as dishonesty were relevant to that test and proven instances of misconduct almost invariably meant that the character test or the misconduct test was met.

[35] The overall stance of Mr Clancy (for the prosecution) is that the only appropriate outcome in this matter is cancellation of the defendant's licence and the imposition of the full financial penalty available, namely, a fine of \$5,000.

[36] There is no challenge that the thresholds under s.94(1)(b) and 94(1)(c) of the 1976 Act have been met. It is also accepted by the defence that the defendant's character is relevant regarding penalty but not whether that threshold has been met.

[37] We agree with Mr Clancy that it is not credible to accept the defendant's conduct as isolated, opportunistic, and without motive. The clear inference is that the motive was to obtain commission from a situation where the defendant had arranged a tenant (for the residential property) who had subsequently bought the property from the vendor but the vendor's attorney did not allow the defendant to formally list the property for sale. In effect, this meant that the defendant had no entitlement to a commission when she had introduced a purchaser (the tenant) to the property and to the vendor.

[38] Also, the facts do not disclose sloppiness as a reason for the defendant's offending and, on the contrary, she went to much trouble to endeavour to obtain an authority to sell the property but the vendor's attorney would not sign a listing agreement and nor was he obliged to. Her reaction was to forge the vendor's signature and pretend for some time that she held a valid listing agreement; and she endeavoured to enforce such an entitlement. There was a forgery plus a deliberate plan to obtain monies based on that. We agree with Mr Clancy that we would not regard that as an isolated incident but as a gross breach of trust.

[39] Just as curiously, the defendant would not participate in the substantive hearing before us at Ashburton on 3 October 2013 despite many endeavours by our staff to effect that.

Parity of Sentencing – Relevant Case Law

[40] In terms of parity in sentencing, both counsel referred to a number of cases which we now address.

[41] In *REAA v Stevenson* [2013] NZREADT 74, a licensed salesperson was engaged to sell a property owned by a colleague within the same agency. The licensee was found to have forged the signature and initials of this colleague on two internal documents which formed part of the property file, particularly a document setting out the commission rate and a document regarding disclosure. The licensee failed to engage with the penalty process and the Tribunal had no information from him with regard to remorse or insight or steps that he was proposing to take in future. The Tribunal found misconduct so serious that a finding of cancellation had to follow.

[42] In Mr Clancy's submission to us, it is put that the forged documents in *Stevenson* were markedly less key than the document forged in the present case; and there was no question in *Stevenson* of the licensee having pursued clients for money by using the forged documents as occurred in this case. We agree.

[43] In *REAA v Kumandan* [2013] NZREADT 28 a licensed salesperson was found to have forged a signature on a document which was entirely internal, being a record-keeping document which simply confirmed that a transaction had settled. The evidence at the hearing did not go beyond showing that the document needed to be signed in order for the file to be closed. As the licensee had already received his commission, there was no question of the document being used in any direct way for financial advantage.

[44] Initially Mr Kumandan had his licence cancelled by this Tribunal. He appealed to the High Court and was successful, but only on the grounds that the character test under the 1976 Act had not been applied. The question of penalty was remitted to the Tribunal which, accordingly, considered penalty again and this time considered the character test. It found that the test was met and concluded that a 12 months

period of suspension would be sufficient penalty in all the circumstances of the case. The Tribunal stated that:

“Mr Kumandan has had his licence cancelled on the basis of the first decision for nine months. He needs to earn an income to support his family. A 12 month suspension would enable Mr Kumandan to see that in a finite time he will be able to work again as an agent. The 12 month period is a third of the maximum suspension which recognises that while this forgery was unacceptable there was no personal gain, it was a single occasion and so is less serious in cases where there is a benefit to the agent or was part of an ongoing scheme to defraud.”

[45] Mr Kumandan appealed against the decision to suspend his licence for 12 months but this second appeal was dismissed.

[46] Mr Clancy submits that the *Kumandan* case can be contrasted with the present case in that the document forged was not a document which could be relied on for financial gain and there was no evidence that it was relied by the licensee for personal gain as in this case.

[47] Mr Clancy submits that, in light of Ms McDonald’s proven dishonesty, her financial motivation, the breach of trust and the fact that a consumer was directly affected, this case is among the most serious likely to come before this Tribunal. We could not disagree with that.

[48] However, Mr Webb submitted that Ms McDonald’s conduct was less serious than that of Mr Kumandan and the prosecution is incorrect in asserting that he did not receive any financial gain from his actions. Mr Webb puts it that we found Mr Kumandan guilty of creating two false documents for the purpose of convincing bankers that there was a legitimate sale with the deposit paid for and organised by a legitimate agent. It was noted at para [31] of *Kumandan* that *“the only person who seems to have financially benefitted is Mr Kumandan who received two lots of commission”*. We noted that he *“apparently received \$24,000”* but in the later penalty hearing we stated *“there was no personal gain”*.

[49] Mr Webb also submits that there is a significant difference in the information available to us in *Kumandan* compared with what is now available about the character of the present defendant.

[50] Mr Webb emphasised that, despite the financial award received by Mr Kumandan and the need to protect the public, we concluded this could be achieved by suspending his licence for 12 months longer than the interim suspension of nine months. Accordingly, he submits that cancellation of the present defendant’s licence would be entirely disproportionate to that.

[51] Mr Webb noted that the prosecution had referred to *Stevenson* on the basis that Ms McDonald’s conduct was more serious than that of Mr Stevenson. The latter had forged the initials and signatures of vendors of a property on two separate documents (a consent and acknowledgement form and a commission rate form); so that, in total, Mr Stevenson had made four forged entries onto two separate real estate documents. He also noted that we had expressed concern that there was strong evidence that Mr Stevenson had also backdated his signing of a Re-Listing agreement. He also pointed out that we had concluded that not only had

Mr Stevenson made the multiple forgeries, but that some aspects of his real estate agent work were seriously negligent or incompetent.

[52] Mr Webb also noted that when we issued the penalty of cancelling Mr Stevenson's licence, we commented that had he not surrendered his licence two days before the original hearing: *"we would have considered some re-education essential for Mr Stevenson had he continued to work as an agent. In the absence of any information from Mr Stevenson and the severity of the forgery, we consider the most appropriate penalty is to cancel Mr Stevenson's registration"*. Mr Webb put it that we were, in essence, stating that a suspension was the appropriate penalty for Mr Stevenson had it been open to us but, because he had surrendered his licence, we were deprived of the opportunity of re-education for him which would have made an order of suspension workable. Mr Webb put it that, in the present case, Ms McDonald seeks to continue to hold her licence and that, as (he submits) her wrongdoing is of the same nature as that of Mr Stevenson, an order of suspension would be appropriate.

[53] He then referred to a number of other decisions which, he submits, indicate that cancellation of Ms McDonald's licence would have been disproportionate.

[54] In *Niall v The Real Estate Institute of New Zealand Inc* (HC Auckland, CIV-2009-404-135, 9 July 2009) the High Court (per Allan J) had noted the importance of considering previous penalty decisions in which forgery was present as follows:

"[38] The Board's powers are extensive. It has jurisdiction to deprive those involved in the industry of their livelihood. It must exercise its jurisdiction in accordance with the principles of natural justice, among which is a requirement that a sanction imposed in a given case must bear some proper relationship to penalties imposed in past similar cases: Aitken v Real Estate Agents Licensing Board HC CHCH AP130/96 6 September 1996 at 12."

[55] In *Niall*, the Court considered the following past similar cases, namely:

- [a] In *Lolohea* (96/420 18 April 1996), Mr Lolohea had falsified agreements for sale and purchase for a number of properties by inserting an inflated purchase price in order to persuade banks to lend a greater proportion of the purchase price than they would otherwise have done. The Board noted that Mr Lolohea's acts were extremely serious, could not be condoned and reflected badly on his integrity. The Board decided that a monetary penalty alone was insufficient and that Mr Lolohea should be suspended for a period of 12 months and pay the maximum fine, \$750.
- [b] In *Ranjit Singh* (96/426 29 July 1996), Mr Singh had falsified agreements for sale and purchase in order to deceive lending institutions by inserting a falsely inflated purchase price. No evidence was put before the Board that showed that Mr Singh was motivated by anything other than a desire to complete sales and to obtain payment of a commission. The Board decided that the appropriate penalty was suspension for 18 months and payment of the maximum fine of \$750.
- [c] In *Ganesh* (97/450 25 September 1997), Mr Ganesh was convicted in the District Court of seven offences of dishonesty arising from material alterations to finance applications and sale and purchase agreements in order to persuade lending institutions to advance more than was

warranted. He did not demonstrate any remorse or offer an apology for his actions but had co-operated fully with the Institute and the Board. The Board ordered Mr Ganesh to pay the maximum fine of \$750 and suspended him for a period of 20 months.

- (d) In *Liu* (2007/604 30 July 2007), Mr Liu had deliberately falsified a tenancy agreement in order to deceive a lender as to the borrower's financial position. In addition, Mr Liu forged his client's signature and, without the client's knowledge, presented the forged tenancy agreement to the lender, knowing the company would rely upon it in considering the client's application for finance. The Board decided that Mr Liu was motivated entirely by his desire to obtain a commission and considered this to be a serious case in that Mr Liu knew that his client would not meet the lending criteria in the absence of falsified information. Mr Liu denied any wrongdoing on his part throughout the disciplinary proceedings and failed to show any remorse. The Board considered cancellation but, eventually, decided to suspend Mr Liu for 24 months and fine him the maximum of \$750.

[56] In *Niall* the Court also said at para [48]:

"[48] The decision in Liu is of considerable significance because, in a contested case, the Board confirmed that it regarded its earlier decisions, stretching back to 1996, as having continuing validity in the sense of providing benchmarks for the assessment of penalties ..."

[57] Cases considered us more recently are also of relevance to the issue of penalty in the current matter.

[58] In *REAA v Dodd* [2013] NZREADT 40, Mr Dodd was found guilty of the forgery of trustees' initials on five occasions spanning a period of five years. We considered that this warranted cancellation or suspension of his licence and was clearly a calculated and sustained course of dishonest conduct. We noted that the documents related to Mr Dodd and his estranged wife being the trustees to a family trust under which their son benefitted and that, as such, were not directly connected to real estate work. Nonetheless, the necessary nexus between Mr Dodd's conduct and his fitness to carry out real estate work was established. We decided that a 12 month suspension of his licence was warranted.

[59] In *CAC10063 v Raj* [2011] NZREADT 20, Mr Raj was found guilty of making false documents for the purpose of deceiving a bank into providing 100% mortgage finance, forgery of a signature on agreements for sale and purchase, and failing to disclose financial benefits that he derived when acting as agent. We found that such conduct was sophisticated and calculated and concluded that Mr Raj's acts were of such seriousness that his licence needed to be cancelled.

Outcome

[60] Broadly speaking, we agree with the stance of the prosecution. We do not regard the charges as relating fundamentally to a single role, i.e. the forgery of a signature on a listing agreement, because on the basis of that the defendant had the gall to claim commission and lodge a caveat on the title to the property in an endeavour to obtain that commission payment. We disagree with the submissions for the defence that there has been no sustained course of conduct nor any effort to deprive. Also we are conscious that the written references presented to us tend to rather gild the lily about the defendant.

[61] We have already stated our penalty orders in this case both immediately after the penalty hearing in Ashburton on 6 march 2014 and above. We have simply taken the overall view that the defendant is being severely penalised in that, as a result of her said offending, she has been barely able to operate as a real estate agent for the past five years and we have now suspended her for the next three years and fined her \$5,000. Such a suspension is, in reality, very close to cancellation of licence and is a severe punishment. We consider that it takes into account, in this particular case, such factors as accountability, deterrence, protection of the community, and the need to promote proper and responsible conduct in all respects by real estate agents as professional people. The aggravating features of the offence have been well covered above, particularly by Mr Clancy. Any mitigating features are somewhat vague because, before us, the defendant did not accept liability and, therefore, felt she could not express remorse nor explain her rather baffling conduct.

[62] 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.

Judge P F Barber
Chairperson

Mr G Denley
Member

Mr J Gaukrodger
Member