

**BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

[2014] NZREADT 50

READT 072/13

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

**BETWEEN** **SHEKHAR VADKE**

Appellant

**AND** **THE REAL ESTATE AGENTS AUTHORITY (CAC 20007)**

First respondent

**AND** **AMANDEEP PANNU**

Second respondent

**MEMBERS OF TRIBUNAL**

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

**HEARD** at Auckland on 30 May 2014

**APPEARANCES**

The appellant in person  
Ms Earle – for the first respondent  
Mr Napier – for the second respondent

**DECISION OF THE TRIBUNAL**

[1] Mr Vadke appeals against a decision of the Complaints Assessment Committee which found Mr Pannu guilty of unsatisfactory conduct but determined to impose no penalty. Mr Vadke considers that this is not a sufficiently serious finding of penalty for Mr Pannu's conduct.

[2] Mr Vadke purchased a property at 4 Joseph Street, Flatbush. Mr Pannu worked for Ray White, and was the agent who was negotiating the sale. Mr Vadke complained of a number of matters concerning Mr Pannu's conduct to the Real Estate Agents Authority. His complaints were:

- (i) That Mr Pannu had advised purchasers that the property had a Master Builder's warranty. Mr Pannu had told Mr Vadke and his wife that they would be able to take over the balance of the seven year Master Builder's warranty which remained on the property.

- (ii) The deposit cheque was cashed prior to the contract becoming unconditional.
- (iii) Mr Pannu told him that the vendors of the property were in financial difficulty.

### ***Complaints Assessment Committee Finding***

[3] The Complaints Assessment Committee found that Mr and Mrs Deo (the vendors) had been asked by Mr Pannu to provide a copy of the Master Builder's warranty. However when he asked to see it the vendors "became sensitive" and because he did not want to offend them further he accepted their word that a Master Builder's warranty existed. He also knew that several other properties in the development which had been sold by him had been transferred with a Master Builder's warranty. He therefore advertised the property as having the remainder of a seven year Master Builder's warranty.

[4] The Complaints Assessment Committee found that there had been misconduct on the part of Mr Pannu in not clarifying exactly the position of the Master Builder's warranty.

[5] The Complaints Assessment Committee found that Mr Pannu should have sighted the Master Builder's warranty and the failure to do so meant that he was misrepresenting the Master Builder's warranty. They found that Mr Pannu had breached his obligations under rule 6.4 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009 and therefore was guilty of unsatisfactory conduct.

[6] With respect to Mr Vadke's complaint that the licensee made comments about the vendor's financial situation and that their marriage was dissolving the Committee found that no comment was made about the financial status of the vendors but that Mr Pannu had advised purchasers that they were separating. They found that this was an authorised statement from the vendors. The Complaints Assessment Committee therefore dismissed this part of the complaint. They made a similar decision with respect to the deposit cheque.

[7] Mr Vadke appealed this decision.

### ***The Appeal***

[8] At the appeal Mr Vadke gave evidence. His evidence was (in addition to his concerns set out in para [2]):

- (i) That Mr Pannu had told him and his friend Mr Nadkarni that Mr Pannu disclosed the vendor's financial and marital issues.
- (ii) That the contract became unconditional only on 18 May<sup>1</sup> and the money should not have been debited from his account prior to that time.
- (iii) That the agency continued to display the sale of Joseph Street on its notice board clearly advertising it as a home with "balance of Master Builder's warranty".

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<sup>1</sup> Despite a letter from Mr Vadke's solicitor saying it was 15 May it was not until 18 May that the contract went unconditional.

- (iv) Mr Vadke submitted that Mr Pannu had accompanied the vendors to buy alcohol, run errands and escort them when drunk. He said that this brought the entire profession into disrepute.

[9] Mr Vadke asked that the strictest possible penalty be imposed upon Mr Pannu. He acknowledged that after proceedings were issued he had now received the balance of the Master Builder's warranty.

[10] Mr Vadke called two witnesses.

[11] Mr Vadke submitted that Mr Pannu should have checked the necessary documents to confirm that there was a Master Builder's warranty. He also said that when he went to Mr Pannu's office with his friend Mr Rekhi he was very abrupt and brushed him off.

[12] Mr Vadke submitted that the penalty imposed upon Mr Pannu was inadequate and did not reflect the gravity of the "malicious, misleading and deceptive conduct" from Mr Pannu.

[13] Finally Mr Vadke submitted that his bank statements show that the deposit was debited from his account on 15 May 2012 despite the agreement for sale being unconditional only on 18 May.

[14] His two witnesses were Mr Nadkarni, who was a friend of both Mr Vadke and Mr Pannu, and Mr Rekhi. Mr Nadkarni had filed a declaration. This said that Mr Pannu told Mr Vadke (in his presence) that the vendors were in both matrimonial and financial difficulties.

[15] However when he came to give evidence this comment was somewhat watered down. In his oral evidence he said that Mr Pannu said "that they were suffering marital difficulties and therefore wanted to sell the property".

[16] Mr Rekhi confirmed that Mr Pannu was abrupt when he and Mr Vadke visited him at his workplace.

### ***Discussion***

[17] The issues for the Tribunal are whether or not the appeal from the Complaints Assessment Committee's decision ought to be allowed to:

- (i) Increase the finding of unsatisfactory conduct to misconduct.
- (ii) Increase the penalty imposed upon Mr Pannu.

[18] After having considered carefully the evidence put forward before the Tribunal the Tribunal finds as follows:

#### ***The Master Builder's warranty – Breach Rule 6.4***

[19] The decision of the Complaints Assessment Committee that Mr Pannu had breached rule 6.4 was correct. The Tribunal recognises that cultural differences sometimes make it difficult for agents to insist upon certain necessary steps being undertaken in respect of properties. However difficult it is for an agent, the rules still require that any material information should be able to be verified. If Mr Pannu had not been able to sight the Master Builder's warranty he should not have advertised

that the property had one and he should have told the vendors this. Accordingly the finding of breach of rule 6.4 is entirely appropriate. We also consider that this conduct is correctly determined to be at the level of unsatisfactory conduct. We do not consider that the evidence showed any evidence of malicious, wilful or reckless behaviour or anything else which would elevate it to conduct requiring a finding of misconduct.

[20] However we consider that the penalty imposed upon Mr Pannu by the Complaints Assessment Committee was too light. Agents do need to be able to separate their professional obligations from their cultural mores. Accordingly the Tribunal considers that a fine (as apparently the licensee considered appropriate in his submissions on penalty) should have been imposed upon Mr Pannu. We substitute for the Complaints Assessment Committee decision to take no steps (other than a censure) the following penalty:

- (i) Mr Pannu is censured.
- (ii) Mr Pannu is fined the sum of \$1,500.

#### *Deposit cheque*

[21] We concur with Mr Pannu's evidence on this matter. There is no evidence to support any wrongdoing in respect of the deposit cheque. From all the documentation available it appears that the contract became unconditional on 15 May and it was paid into the trust account of the agency on that day. However it could have been paid into the trust account at an earlier date without any breach of Mr Pannu's obligations as long as it was not disbursed to the vendor before the contract became unconditional. There does not appear to be any suggestion of this. We therefore reject Mr Vadke's appeal on this point.

#### *Rudeness*

[22] We are not satisfied that Mr Vadke has proved that Mr Pannu was rude. His witness Mr Rekhi described Mr Pannu as being abrupt. In order to amount to misconduct the rudeness would need to be very significant. This point of appeal cannot therefore succeed.

#### *Inappropriate disclosure of financial information*

[23] Mr Vadke's witness (Mr Nadkarni) called to give evidence in support of this assertion, did not support this assertion and instead supported the position of Mr Pannu. This was, that he had told Mr Vadke that the vendors were in marital difficulties and were looking for a fast sale. This appears consistent with Mr Pannu's evidence and the evidence of Mr Nadkarni. We therefore dismiss this point of appeal.

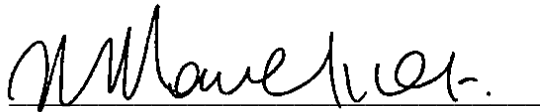
#### *Impropriety with vendors*

[24] No evidence was presented on this except Mr Vadke's assertions. In the absence of any further evidence other than these assertions, we dismiss this point of appeal. We make no finding.

[25] Accordingly we uphold the appeal by substituting our conclusion on penalty for the Committee's. In all other respects we confirm the decision of the Committee.

[26] The Tribunal draws the parties' attention to the appeal provisions in s 116 of the Real Estate Agents Act 2008.

DATED at AUCKLAND this 10<sup>th</sup> day of July 2014



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Ms K Davenport QC  
Chairperson

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Ms N Dangen  
Member

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Ms C Sandelin  
Member