

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2014] NZREADT 69

READT 037/12

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

BETWEEN **COMPLAINTS ASSESSMENT
COMMITTEE (CAC 20006)**

Prosecutor

AND **ZOHREH HOMEI AZIMI**

Defendant

MEMBERS OF TRIBUNAL

Judge P F Barber - Chairperson
Mr J Gaukrodger - Member
Ms C Sandelin - Member

HEARD at AUCKLAND on 27 and 28 May 2014

DATE OF THIS DECISION 16 September 2014

COUNSEL

Mr R M A McCoubrey and Ms J M Pridgeon for the prosecution
Mr M Hislop for the defendant licensee

DECISION OF THE TRIBUNAL

Introduction

[1] Complaints Assessment Committee 20006 charges Zohreh Homei Azimi with two charges of misconduct pursuant to s.73(a) of the Real Estate Agents Act 2008 ("the Act"). The prosecution alleges that Ms Azimi's conduct would reasonably be regarded by agents of good standing, or reasonable members of the public, as disgraceful because:

- [a] **Charge 1:** she allowed a fraudulent loan application to be made in her name for the purchase of 1/3185 Great North Road, Auckland; and
- [b] **Charge 2:** she listed and sold 23 Glenmore road, Sunnyhills, 3/78 Paihia Road, One Tree Hill, and 10B Heretaunga Avenue, Onehunga, on more than one occasion each, knowing that she was doing so to facilitate the commission of a fraudulent mortgage scheme.

[2] The charges read in full as follows:

"1 Charge in relation to the fraudulent loan application

- 1.1 *Complaints Assessment Committee 20006 (Committee) charges the Defendant with misconduct under s.73(a) of the Real Estate Agents Act 2008 (Act) in that her conduct would reasonably be regarded by agents of good standing, or reasonable members of the public, as disgraceful.*

Particulars

On 29 March 2010, the defendant allowed a fraudulent loan application to be made in her name to Kiwibank for the purchase of a property at 1/3185 Great North Road, Auckland.

2 Charge in relation to involvement with a fraudulent mortgage scheme

- 2.1 *Following a complaint by Peter Thompson (Complainant), Complaints Assessment Committee 20006 (Committee) charges the defendant with misconduct under s.73(a) of the Act in that her conduct would reasonably be regarded by agents of good standing, or reasonable members of the public, as disgraceful.*

Particulars:

- (a) *Between 2007 and 2011, the defendant listed, re-listed and sold the property at 23 Glenmore Road, Sunnyhills, knowing that she was doing so to facilitate the commission of a fraudulent mortgage scheme;*
- (b) *Between 2007 and 2011, the defendant listed, sold, re-listed and sold the property at 3/78 Paihia Road, One Tree Hill, knowing that she was doing so to facilitate the commission of a fraudulent mortgage scheme;*
- (c) *Between 2007 and 2010, the defendant listed, sold, re-listed, sold, re-listed and sold again the property at 10B Heretaunga Avenue, Onehunga, knowing that she was doing so to facilitate the commission of a fraudulent mortgage scheme.*

3. Alternative charge in relation to involvement with a fraudulent mortgage scheme

- 3.1 *In the alternative, following a complaint made by Peter Thompson (complainant), Complaints Assessment Committee 20006 (Committee) charges the defendant with seriously negligent real estate agency work under s.73(b):*

Particulars:

- (a) *Between 2007 and 2010, the defendant listed, sold, re-listed and sold the property at 23 Glenmore Road, Sunnyhills, without identifying or*

reporting to her supervisor the pattern of transactions in respect of the property;

- (b) Between 2007 and 2011, the defendant listed, sold, re-listed and sold the property at 3/78 Paihia Road, One Tree Hill, without identifying or reporting to her supervisor the pattern of transactions in respect of the property;*
- (c) Between 2007 and 2010, the defendant listed, sold, re-listed, sold, re-listed and sold again the property at 10B Heretaunga Avenue, Onehunga, without identifying or reporting to her supervisor the pattern of transactions in respect of the property."*

The Statutory Reference

[3] Section 73 of the Act reads:

"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."*

Charge One: Brief Background

[4] The prosecution refers generally to the briefs of evidence filed on its behalf, and particularly to that of Christopher Paul Delaney.

[5] In early 2010, New Zealand Home Loans received a loan application in the name of Zohreh Sadeghi Garkani. This is a name that Ms Azimi is also known by. In support of the application, a number of documents were filed and these included:

- [a] Letters from two persons who claimed to board with Ms Azimi and pay her for that board;
- [b] An employment contract outlining that Ms Azimi was an accountant working for SBA Penrose Ltd and receiving \$85,635 per annum as salary;
- [c] A letter from a person at SBA Penrose Ltd certifying that Ms Azimi worked on a full time basis as a general manager of that company; and

[d] Bank statements showing that SBA Penrose Ltd paid Ms Azimi money (as salary).

[6] Ms Azimi was interviewed about the loan application. In the interview, she said that she allowed Ms Eli Devoy to make this application and sign it on her behalf. Ms Devoy is someone who is a key figure in the fraudulent mortgage scheme which is the subject of charge 2, and explained in more detail below. Ms Devoy and Ms Azimi are friends. However, at some stage in the interview, Ms Azimi agreed that she had signed the application herself. The section she agreed she signed related to a declaration that the matters contained in the application were true and correct. Ms Azimi did not confirm which of these was the true version of events; although her evidence to us was that she, the defendant, signed the loan application in blank.

[7] In addition, Ms Azimi confirmed that she did not know who the boarders were and confirmed that the signed letters from people claiming to live with her were false.

[8] Ms Azimi also said that the Great North Road property is one that she had previously sold, as a real estate agent, to Ella Ghorbani and Hassan Salarpour. Ella Ghorbani is also a name by which Ms Devoy is known. Ms Azimi's sales records show that the sale she made to Ella Ghorbani and Hassan Salarpour only six months' earlier was at a price of \$282,000. However, in the loan application which she submitted, or allowed to be submitted in her name, she sought to borrow \$372,300 which is \$90,300 more than the said \$282,000. The loan application did not mention that Ms Azimi was a real estate agent who had worked for Barfoot & Thompson since January 2007. She was dismissed from that role in July 2011 when the current allegations surfaced. She is shown as an "Accountant" employee of SBA Penrose Ltd with the inference that was her full-time and only job. Her detailed employment contract with that employer company is on the same basis. In fact the evidence is that she is not qualified to be an accountant but is a tax agent.

[9] Mr Delaney's brief of evidence outlines the above allegation in detail. In summary, the prosecution alleges that Ms Azimi was knowingly party to a dishonest loan application.

Charge Two: Brief Background

[10] In April 2011, a Kiwibank investigation revealed what appears to be a fraudulent mortgage syndicate. It is alleged that the syndicate is run by a group of about 20 people and Ms Azimi is either in that group or associated with it. Members of the group are either from Ms Devoy's family or one of her known associates. Allegedly, Ms Azimi's role in the group, relative to this charge, is that of a real estate agent introducing vendors to purchasers. The prosecution alleges that her participation as a real estate agent lends itself to making the transactions as a whole appear legitimate.

[11] It is put that the group works together to submit fraudulent loan applications, often consisting of fictitious information, to make the applicant appear eligible for a loan. After a period of time, the applicant defaults on his or her mortgage so that the property goes to mortgagee sale. At this point, the next associate in the chain is introduced to purchase the property. The property's price is then ramped up, over a period of time, and a similar procedure followed ultimately leading to another mortgagee sale. The ramped up price is often at the top of the property's price range or has it over-valued.

[12] When the properties go to mortgagee sale, the lending bank is paid back the forced sale value of the property, which is lower than the initial loan advanced to the applicant i.e. the mortgagor. It is alleged that the syndicate profits, because the initial loan advanced (and probably subsequent loans) is higher than the true value of the property. Presumably, the mortgagor either flits New Zealand or files in bankruptcy. It is not clear to us why the lending Bank does not realise from a valuation of the property that its loan is quite excessive in relation to the value of the security.

[13] This overall pattern is explained by Lisa Kerr in her brief and can be seen in the examples outlined in Mr Delaney's brief of evidence. One of those examples is shown in the following history of the property at 23 Glenmore Road, Sunnyhills.

An Example: 23 Glenmore Road, Sunnyhills

[14] This property was first bought by a member of the group on 1 July 2007 for \$568,800 from vendors Dairy Global and Jiangwen Lu. This was a transaction that Ms Azimi facilitated in her role as agent. Dana Omidvar, Ms Devoy's mother, is the person who bought the property. No mortgage was registered against the property for this transaction.

[15] Eleven days later, on 12 July 2007, the property was sold to Mehrdad Ghorbani, who is Ms Devoy's brother and Ms Omidvar's son, for \$625,000. A mortgage was registered to the ANZ National Bank Limited the same day.

[16] On 29 October 2007, the property was transferred to Mehrdad Ghorbani's company, Resourceful Engineers Limited. A mortgage was registered against the title to the ANZ National Bank Limited the same day.

[17] On 19 April 2009, the property was listed for sale again with Ms Azimi. Ms Azimi facilitated a mortgagee sale from Resourceful Engineers Limited to Shirin Hasali Pashaie and/or nominee for \$448,000. This sale was subject to clause 15 of the sale and purchase agreement which provided that the agreement was *"conditional upon the vendor obtaining the consent of the mortgagee for the sale to proceed"*.

[18] The certificate of title for the property shows that Roya Nasserri became the registered proprietor on 7 October 2009. Roya Nasserri is an associate of the Ghorbani family. A mortgage was registered against the title to the Mortgagee Holding Trust Company Limited.

[19] Roughly six months' later, on 2 November 2009, the property sold to Mohammad Ghorbani Sarsangi and Aezamossadat Nejad for \$628,000. Mohammad Ghorbani Sarasangi is another name by which Mehrdad Ghorbani is known and the co-purchaser is his wife. The property was registered in their names on 17 November 2009.

[20] In December 2010, they sold the property to Milca Nejad for \$628,000. Milca Nejad is another name by which Aezamossadat Nejad is known.

Summary of Charge Two

[21] The example just provided demonstrates a pattern whereby a property is bought by a member of the syndicate, often facilitated (allegedly) by Ms Azimi; it then

quickly changes hands, its price being ramped up every time until a "crash" sale, which is again a sale Ms Azimi is involved in; and the same pattern again takes place.

[22] The prosecution showed Ms Azimi's involvement in only some of the transactions; often the initial purchase into the scheme, and then again for the "crash" sale.

[23] Looking at the evidence as a whole and in context, the prosecution alleges that Ms Azimi is knowingly involved with the mortgage fraud syndicate; and that her role is to provide an air of legitimacy to some of the transactions, which facilitates a façade of the overall transactions being lawful.

3/78 Paihia Road

[24] Ms Azimi was involved as a real estate agent in two transactions. The property first appears on her sales records on 30 April 2008 and then again on 30 April 2010.

[25] On 27 January 2004, Dongying Zhu bought this property for \$280,000. On 5 July 2004, Rizes Limited bought the property for \$179,000.

[26] This property was first listed with Barfoot & Thompson on 11 March 2008.

[27] An agreement for sale and purchase dated 18 March 2008 shows that Ms Azimi negotiated a sale from Rizes Limited to Dana Omidvar and/or nominee for \$272,000. Ms Azimi was the listed real estate agent.

[28] Ms Azimi's sales records show that sale "cleared" on 30 June 2008. The certificate of title shows that title was transferred to Dana Omidvar on 19 June 2008 and a mortgage was registered to ANZ National Bank on the same day.

[29] The property was sold on 17 September 2008, roughly six months after the previous sale and purchase agreement, for \$316,000. That is \$44,000 more.

[30] The certificate of title shows that on 21 January 2009, Dana Omidvar's mortgage was discharged and Mehran Ghorbani became the registered proprietor of the property. Mehran Ghorbani is Dana Omidvar's son. A mortgage to Westpac New Zealand Limited was registered against the property the same day.

[31] About a year later, on 2 February 2010, Mehran Ghorbani listed the property for sale with Ms Azimi who appraised the property as between \$280,000 and \$320,000.

[32] On 30 March 2010, Ms Azimi negotiated a sale from Mehran Ghorbani to Natali Raisey and/or nominee for \$210,000.

[33] Ms Azimi's sales records show that 30 April 2010, this sale "cleared". The certificate of title for this property shows that it was transferred to Ben Ferrari on 21 July 2010. He must have been Natali Raisey's nominee. Ben Ferrari is shown on the connections diagram as an associate of the Ghorbani family. On the same day, a mortgage was granted to Westpac.

[34] Under four months later, on 12 August 2010, a private sale and purchase agreement was entered into between Ben Ferrari and Fatemeh Saei for \$310,000. This is \$100,000 more than the previous sale. The certificate of title confirms that

this sale took place and the RPNZ report also shows that the transfer to Fatemeh Saei was for \$310,000.

[35] Ms Azimi was involved as the real estate agent in three transactions. The property appears on her sales records on 31 August 2007, 12 February 2009, 26 May 2009, 30 June 2009 and then again on 21 June 2010. Some of these transactions are recorded as "*cleared*" and some are recorded as "*fallen*". In his evidence, John Endean explains that "*fallen*" means that a sale has been negotiated, but the conditions were not fulfilled and the sale did not complete.

[36] On 10 May 2007, the property was listed for sale with Barfoot & Thompson, with Urata Alailua as vendor.

[37] On 5 July 2007, Ms Azimi negotiated a sale between Urata Alailua and Dana Omidvar and/or nominees for \$420,000. Ms Azimi was the agent listed in the sale and purchase agreement.

[38] The certificate of title for the property shows that Dana Omidvar became the registered proprietor on 13 August 2007. On the same day, title was transferred to Mehrzad Ghorbani (an associate of the Ghorbani family) and a mortgage granted in favour of the ANZ National Bank Limited. Mehrzad Ghorbani seems to have been Dana Omidvar's nominee. This sale is recorded in Ms Azimi's sales history on 31 August 2007 as "*cleared*".

[39] The certificate of title shows that on 31 July 2008, the property was transferred to Mehrdad Ghorbani, Mehran Ghorbani and Ella Ghorbani (who are sons and a daughter of Dana Omidvar). A mortgage was granted in favour of ANZ National Bank Limited.

[40] On 18 December 2008, around 18 months after the previous sale Ms Azimi was involved in, Mehrzad Ghorbani and Mehrdad Ghorbani listed the property with Ms Azimi. The recommended asking price was between \$390,000 and \$440,000.

[41] On 18 January 2009, Ms Azimi attempted to negotiate a sale between Mehrzad Ghorbani and Stan James Walsh and/or nominee. The purchase price listed was as \$310,000 in the sale and purchase agreement. This sale did not proceed. The property is listed as "*fallen*" in Ms Azimi's sales records on 12 February 2009 at \$550,000.

[42] On 11 February 2009, Ms Azimi attempted to negotiate a sale of the property to Andrew Robert Luke and/or nominee for \$328,000, which is the amount listed in the sale and purchase agreement. The sale did not proceed. The property is listed as "*fallen*" in Ms Azimi's sales records on 26 May 2009.

[43] On 27 May 2009, the earlier agreement dated 18 January 2009 between Mehrzad Ghorbani and Stan James Walsh and/or nominee was brought back to life.

[44] Ms Azimi's sales history shows that on 30 June 2009, this sale "*cleared*" for \$310,000. This is \$110,000 less than what Ms Azimi had sold the property for on the previous occasion, which was about 24 months earlier.

[45] A document from The Property Law Centre confirms that its client, Stan Walsh, was to nominate Nasrin Natalie Raisey as the beneficial purchaser of the property.

[46] The certificate of title shows that on 3 August 2009, the property was transferred to Nasrin Natalie Raisey and a mortgage was granted in favour of Westpac Bank.

[47] On 24 November 2009, Nasrin Natali Raisey sold the property to Nasrin Kardani and/or nominee for \$550,000 by way of private treaty. This is \$240,000 more than what it had sold for just under six months' earlier. Nasrin Kardani is the ex-partner of Dana Omidvar's son, Mehrdad Ghorbani (aka Mohammed Ghorbani).

[48] The certificate of title confirms that title was transferred to Nasrin Kardani and/or Mohammad Ghorbani Sarsani on 10 December 2009 at \$550,000.

[49] On 4 May 2010, the property was listed by Nasrin Kardani and Mohammad Ghorbani Sarsangi for sale with Ms Azimi. Ms Azimi provided an estimated appraisal price for the property of \$500,000. This is roughly a year after Ms Azimi last negotiated a sale on this property for \$310,000 between associates of the group. It is also roughly three years after Ms Azimi acted in the sale from a third party vendor to Dana Omidvar, who is Mohammad Ghorbani's mother.

[50] On 11 June 2010, Ms Azimi negotiated a sale from Nasrin Kardani and Mohammad Ghorbani Sarsangi to Donald James Jap and May-Li Tsai for \$488,000. Just over a year after the previous sale negotiated by Ms Azimi, the property was sold for \$178,000 more.

Submissions for the Prosecution

[51] Ms Azimi denies the charges so that it is necessary for the prosecution to prove, on the balance of probabilities, the charges as matters of fact. If we accept the facts as proved, the issue then becomes whether the conduct alleged under both charges amounts to misconduct under s.73(a) of the Act.

[52] The prosecution submits that, based on the evidence filed in support, and the summary outlined above, we should have no trouble finding the allegations proved as matters of fact.

Does Ms Azimi's Conduct Amount to Misconduct?

[53] The prosecution submits that, if we accept that the factual allegations are proved, misconduct findings under s.73(a) must follow. Section 73(a) of the Act is set out above.

[54] In *Pillai v Messiter* (No 2) (1989) 16 NSWLR 197 (NSWCA) the New South Wales Court of Appeal said of misconduct:

"Professional misconduct does not arise where there is mere professional incompetence nor deficiencies in the practice of the profession by a practitioner. More is required. Such misconduct includes a deliberate departure from accepted standards or such serious negligence as, although not deliberate, to portray indifference and an abuse of the privileges which accompany registration ..."

[55] We have accepted this definition in numerous decisions and have also considered the ambit of the term "*disgraceful*" in *CAC v Downtown Apartments Ltd* [2010] NZREADT 06 where we held:

"[55] The word "disgraceful" is in no sense a term of art. In accordance with the usual rules it is given its natural and popular meaning in the ordinary sense of the word. But s.73(a) qualifies the ordinary meaning by reference to the reasonable regard by agents of good standing or reasonable members of the public.

[56] The use of those words by way of qualification to the ordinary meaning of the word disgraceful make it clear that the test of disgraceful conduct is an objective one for this Tribunal to assess. See Blake v The PCC 1997 1 NZLR 71.

[57] The 'reasonable person' is a legal fiction of common law representing an objective standard against which individual conduct can be measured but under s.73(a) that reasonable person is qualified to be an agent of good standing or a member of the public.

[58] So while the reasonable person is a mythical ideal person, the Tribunal can consider, inter alia, the standards that an agent of good standing should aspire to including any special knowledge, skill, training or experience such person may have when assessing the conduct of the ... defendant.

[59] So, in summary, the Tribunal must find on balance of probabilities that the conduct of the ... defendant represented a marked or serious departure from the standards of an agent of good standing or a reasonable member of the public."

[56] Section 73(a) therefore allows for disciplinary findings to be made in respect of conduct which would be considered as a marked or serious departure from the standards of an agent of good standing or a reasonable member of the public. The prosecution submits that the defendant's conduct outlined above most certainly meets the test because the facts alleged in both charges one and two are disgraceful.

[57] In the prosecution's submission, the defendant knowingly permitted a fraudulent loan application to be made in her name for the purchase of the Great North Road property. In addition, the prosecution alleges that the defendant was knowingly involved in a mortgage fraud scheme; and her role, as a real estate agent, was to provide an air of legitimacy to the overall sale and purchase of a number of properties as part of that scheme.

[58] The prosecution submits that, in doing both these things, Ms Azimi has intentionally engaged in disgraceful conduct. We agree.

Reckless Conduct is Disgraceful Conduct

[59] Should we not accept that Ms Azimi's conduct was deliberately disgraceful, the prosecution submits that she acted with such a level of recklessness as to meet the test of misconduct; and it is not necessary for disgraceful conduct to be intentional.

[60] This position has been confirmed by the High Court in *Director of Proceedings v Parry* [2001] 2 NZLR 249 (HC). This case included the issue of what amounted to disgraceful conduct in the context of the Medical Practitioners Act 1995. Justice Paterson said at [44]:

"[44] There is more than one way of describing the test for "disgraceful conduct in a professional respect". The Full Court in Brake determined that such conduct could include such "serious negligence as, although not deliberate, to portray indifference and an abuse of the privileges which accompany registration as a medical practitioner". Although a single act of mere negligence could never, in my view, constitute disgraceful conduct, I see no reason for departing from the Full Court's view that serious negligence of a non-deliberate nature can in appropriate cases constitute disgraceful conduct. It is not difficult to envisage cases where this could be so, or cases where only one act of serious negligence can amount to disgraceful conduct."

[61] At [48], His Honour went on to say:

"[48] ... Clearly, under the definition of "disgraceful conduct" as I find it to be, a practitioner can commit an offence by one act of gross negligence if that act, although not deliberate, is an abuse of the privileges which accompany registration as a medical practitioner."

[62] The prosecution submits that this definition is applicable here and that while acts done with a wrongful intention may be captured by s.73(a), so may reckless acts or seriously negligent acts. We agree.

[63] Mr McCoubrey submits that subs.(b) and (c) of s.73 make it clear that reckless and seriously negligent acts are within the scope of misconduct under the Act and relevant criminal convictions in terms of s.73(d) may arise from reckless or negligent acts. There is also overlap between each of the subsections in s.73. A wilful or reckless contravention of the Act, its Regulations or Rules, or other relevant Acts, (s.73(c)) may also represent seriously negligent real estate agency work (s.73(b)). A wilful or reckless contravention of the Act (s.73(c)) may also result in a relevant criminal conviction (s.73(d)). Accordingly, each of subs.(b), (c) and (d) are capable of covering a wide range of conduct, some of which may overlap; and there is no reason to interpret s.73(a) in a restrictive way. Mr McCoubrey submits that whichever subsection of s.73 is proved, it amounts to the same thing, namely, misconduct.

[64] The prosecution also submits that the distinction in the type of misconduct lies in determining the orders faced by the licensee as a result of the misconduct finding. Following a misconduct finding, we have a wide range of orders at our disposal. These range from making a bare finding of misconduct only (which will be recorded on the public register), censuring the licensee, or ordering him or her to apologise, to ordering compensation, fining the licensee, or suspending or cancelling his or her licence (or any combination of orders); - Real Estate Agents Act 2008, s.110. The wide range of orders open to us reflects the wide range of conduct which may amount to misconduct under s.73.

[65] This is consistent with *Martin v Director of Proceedings* HC Auckland CIV 2006-404-5706, 2 July 2008 at [31] where the High Court held, in respect of disciplinary proceedings under the Health Practitioners Competence Assurance Act 2003, which

superseded the 1995 Act: "... *the gravity of the misconduct should be reflected in the penalty rather than in the actual finding of professional misconduct. In comparison, under the previous schemes the gravity of the conduct was, to a significant extent, reflected in the charge itself.*"

[66] It is further submitted by Mr McCoubrey to be necessary that s.73(a) is not limited to intentional wrongdoing and is wide enough to cover reckless or seriously negligent acts, because it has a different scope than each of s.73(b) (limited to real estate agency work), s.73(c) (limited to contraventions of the Act, Regulations, Rules or other Acts which apply to licensees), and s.73(d) (limited to criminal convictions). We agree.

[67] It is put that, by way of example, residential property management is not real estate agency work under the 2008 Act. However, a licensee who is also a residential property manager may have repeatedly demonstrated serious negligence in the handling of trust account funds as a residential property manager. That may be conduct we would wish to examine in terms of s.73(a), because it is directly relevant to the way in which the licensee may handle trust account funds in carrying out real estate agency work.

[68] The prosecution therefore submits that we should not seek to limit the flexibility of the language used in s.73(a) by putting a gloss on the "*disgraceful conduct*" test; those words make clear that the departure from acceptable standards must be a marked or serious one; and this is reinforced by the progression from unacceptable conduct in s.72(d) to disgraceful conduct in s.73(a).

[69] In summary it is put, misconduct will be proved under s.73(a) if the conduct represents a marked or serious departure from acceptable standards such that it can properly be described as disgraceful. Again, we agree with that.

This Case

[70] If we find that Ms Azimi did not knowingly allow a fraudulent loan application to be made in her name, or did not knowingly submit one herself, the prosecution submits that, at an absolute minimum, she acted with such a level of recklessness as to amount to disgraceful conduct.

[71] In relation to the second charge, the prosecution put it that if we find that Ms Azimi was not knowingly involved with the mortgage fraud scheme, at a minimum, and at best for Ms Azimi, if Ms Azimi was acting in good faith, a concerning pattern of the same properties changing hands among people related to or closely associated with Ms Devoy, would have been obvious to Ms Azimi; and a licensee, acting in good faith, would have recognised this obvious pattern and raised it with her superiors; but Ms Azimi did not do this.

[72] In relation to charge two, the prosecution submits that Ms Azimi was knowingly involved in a mortgage fraud scheme, but if this is not accepted by us, her actions in effectively turning a blind eye to an obvious pattern was so reckless so as to amount to disgraceful conduct.

[73] As we cover below, we agree with the submissions for the prosecution in this case.

Relevant Evidence for the Prosecution

The Witness Ms L Kerr

[74] The first witness for the prosecution was Ms L Kerr, an investigator employed by Kiwibank. She stated in her evidence-in-chief that in April 2011 Kiwibank commenced an investigation into one of its customers, a Ms Kardani, after she defaulted on a mortgage. Kiwibank discovered that false documentation and questionable information had been included in her loan application for that mortgage. When she had made that application she was represented by a Ms E Ghorbani, also known as Ms Devoy, who acted as Ms Kardani's mortgage broker. That led Kiwibank to investigate all files in which Ms Devoy had been involved which uncovered fraudulent documents and questionable information across a number of loan applications and files.

[75] In particular, Kiwibank discovered that the same properties had been purchased and sold among persons with the same surname, or with apparent links to one another, and it connected 20 such people across various files and concluded that a mortgage fraud syndicate might be in existence.

[76] Inter alia, Ms Kerr noted that when Ms Devoy introduced applicants to the bank for loans, after a few initial meetings bank staff do not meet, speak, or see the applicant again and Ms Devoy controls the application process and provides most of the supporting documentation. Ms Kerr considers that in some cases the mortgage applicant would not have met the bank's lending criteria but that Ms Devoy has fabricated information to make the applicant appear eligible.

[77] Kiwibank alleges that some of the applicants have willingly defaulted on their mortgage so that the property goes to a mortgagee sale; and that allows Ms Devoy to introduce her next associate who purchases the property likely at an overvalued price. At a mortgagee sale, the bank would probably receive the forced sale value of the property which would be (and has been) far lower than the loan it secured. It is alleged by the bank that the syndicate profits because the initial bank loan advanced is higher than the true value of the property. In all the relevant cases, the mortgage applicant to Kiwibank was one of Ms Devoy's family members or associates and, allegedly, the defendant licensee, Ms Azimi, is one of the associates of the syndicate.

[78] It is alleged that the defendant is linked with other members of the syndicate including: Ms Devoy, Ms Kardani, Mr W Devoy, Mehrdad Ghorbani, Mehran Ghorbani, Mohammed Ghorbani, Melica Nejad, Dana Omidvar, and Javad Torabay.

[79] Melica Nejad has been a Kiwibank loan applicant and is alleged to be married to Mohammed Ghorbani, who is Ms Devoy's brother. Ms Nejad used 241 Church Street, Auckland, as her work place address when making a loan application for a property at 23 Glenmore Road, Sunnyhills, in 2010 and the former property is or was owned by the defendant. Ms Nejad also provided an employment contract signed in the name of S Garkani, which is believed to be an alias of the defendant.

[80] On 23 August 2010, Unit 42/2 Cawley Street, Auckland, was listed with the defendant and the vendor was shown as Hamed Besharati. The property was purchased by Dana Omidvar, who is Ms Devoy's mother, on 18 December 2010 for \$100,000. However, on 20 April 2011 Ms Omidvar sold the property for \$280,000.

Her bank statement shows that she was paid \$278,612 on 12 May 2011 by her lawyer, presumably, being less legal fees, and on 23 May 2011 she paid the defendant \$140,000 and Ms Devoy \$70,000.

[81] Ms Kerr observed that banks view the involvement of a real estate agent in property transactions as significant because they are seen as demonstrating that the transaction is legitimate i.e. arm's length and at a fair market value.

[82] Ms Kerr said that, in March 2010, a subsidiary of Kiwibank received a home loan application from Zohreh Sadeghi Garkani, an alias of the defendant's, for the purchase of 1/3185 Great North Road, Auckland. The matter did not go ahead as the mortgage application was withdrawn by Ms Azimi. The application was not fully complete at the time it was made but in it the defendant stated that her employer was SBA Penrose Ltd, believed to be an accountancy firm, and she stated she had worked there for 15 months. She had listed her previous employer as Mt Albert Accountants for whom she stated she had worked for three years but no mention was made of her employment as a real estate agent with Barfoot & Thompson.

[83] Ms Kerr was carefully cross-examined by Mr Hislop for the defendant.

The Witness Mr J Endean

[84] Mr Endean is the manager of the Royal Oak branch of Barfoot & Thompson where the defendant licensee worked as a real estate agent. He interviewed her for that position in December 2006 after she and Ms Devoy had approached him for a position for the licensee. Mr Endean stated that Ms Devoy was present with the licensee during the interview and kept endeavouring to take the lead at that meeting; so that Mr Endean had to ask Ms Devoy to leave the meeting because it was the licensee who was seeking the employment. The defendant commenced working for Barfoot & Thompson in January 2007 and soon developed a pattern of working with customers of Iranian descent.

[85] In 2011 the employer became aware that a number of commercial banks were investigating an alleged mortgage fraud syndicate and that the defendant had been identified as part of that group. Her sales records at Barfoot & Thompson were examined and showed that she was the real estate salesperson who listed and acted on the sale of a number of properties identified as being those used by the mortgage fraud syndicate. Detailed evidence to that effect was adduced to us.

[86] Mr Endean said that, when he looked at the sales records of the defendant, he became concerned about the pattern of names and properties appearing and reappearing. Inter alia, Mr Endean noted that the defendant's sales records contain an entry of 30 September 2009 for the sale of 1/3185 Great North Road, New Lynn. That was a mortgagee sale conducted through the agency on behalf of a bank and the defendant was the marketing agent. The sale was to a Ms Ella Ghorbani and/or nominee for \$282,000. Mr Endean said he is aware that a loan application was made to Kiwibank in the defendant's name for a mortgage over that property just under six months later and the sale and purchase agreement and loan application stated that the defendant was purchasing the property for \$438,000.

[87] Mr Endean concluded his typed evidence-in-chief as follows:

"2.8 As a result of becoming aware of Ms Azimi's alleged involvement with a mortgage fraud syndicate and because of my own concerns, Ms Azimi was dismissed from employment with Barfoot & Thompson in July 2011."

[88] Mr Endean gave more evidence-in-chief before us about the detail of the said transactions and was carefully cross-examined by Mr Hislop. Inter alia, we understood that Mr Endean noted that the defendant worked closely with Ms Devoy who was a mortgage broker and he allowed Ms Devoy to rent space for a while upstairs at his offices.

The Witnesses Messrs C. P. Delaney and R Gouverneur

[89] A brief of evidence had been filed for the prosecution by Mr C P Delaney who had been a senior investigator at the Authority but had moved to other employment. Mr R Gouverneur gave evidence relevant to this case as a senior investigator of the Authority as he had taken over this matter from Mr Delaney in January 2014. Essentially, he was able to confirm Mr Delaney's brief, produce the exhibits in the agreed bundle of documents, and set out the narrative covered above which follows from the relevant document.

Evidence of the Defendant

[90] In her typed evidence-in-chief, the defendant stated that she has been living in New Zealand for 23 years. She worked as a real estate agent at Barfoot & Thompson Royal Oak from January 2007 until July 2011. Prior to that she had lived in Christchurch for 13 years and worked there as a real estate agent. After she left Barfoots she worked for Harcourts at Remuera, Auckland until her licence was suspended.

[91] The defendant said she is of Iranian descent and her first language is Farsi. She said that when she moved to Auckland she made contact with Ms Devoy, whom she had previously met in Christchurch during 2006, because Ms Devoy understood the Auckland area and encouraged her to operate as a real estate agent for Barfoots at Royal Oak. The defendant said her main source of listings came from Iranian people in Auckland and she advertised on the local Farsi TV station on Sunday afternoons. She said she had a lot of Iranian repeat clients during her time at Barfoots and these clients would relist their properties with her because, she said, they trusted her and she was well known in the Iranian community in Auckland.

[92] The defendant observed that when she was dismissed by Mr Endean on 17 August 2011, which was the day after she had been interviewed by Mr Delaney, it was not made clear to her that she was dismissed due to concerns of Mr Endean about her alleged involvement in a mortgage fraud syndicate. The remainder of the defendant's evidence-in-chief reads as follows:

"Brief of evidence of Zohreh Homei Azimi

14. *On 16 August 2011 while I was still employed at Barfoots, I was approached by Chris Delaney as he told me he had some questions to ask about Eli Devoy.*

15. *I asked Chris whether it was serious and whether I should contact a lawyer. He told me that I had nothing to worry about and that I didn't need one. During the interview I asked Chris at least another three times whether I should get a lawyer present and on each occasion he said that it was not necessary.*

3185 Great North Road

16. *I was asked about a finance application for 1/3185 Great North Road, Auckland however due to my broken English I didn't understand what he meant until he clarified by saying it was about the loan application. I then confirmed that a loan application was made in my name for the purchase of this property.*
17. *I accept that I did sell this property via mortgagee sale to Ella Ghorbani for \$282,000 on 30 September 2009.*
18. *From memory, while I was overseas at the end of 2009, or the beginning of 2010, I received a call from Eli Devoy, Ella Ghorbani's sister. She told me that Ella and her husband Hossan had a problem with the property, something to do with the code compliance and an issue with the bank.*
19. *She asked me whether I would be interested to buy the property, if they weren't able to sell it. At the time I was aware that they had done a lot of renovation work to the house, and I said that I would consider buying it as a rental property if they weren't able to sell it and if I was able to get finance.*
20. *I recall that Ella and her husband weren't able to sell the property so I did agree to buy it at registered valuation for \$420,000. It was a 6 bedroom house with a rental appraisal of about \$550 to \$600 per week. From my own calculations it was a viable purchase as an investment property.*
21. *Eli said that I should leave the mortgage application to her as she would refer it all to Patrick Pardo of New Zealand Home Loans, Massey. As Eli had done mortgage broking before and the fact that I had dealt with Patrick on numerous occasions, I thought it would all be in order. I recall that I signed the blank page of a New Zealand Home Loan application in March 2010.*
22. *I confirm that none of the pages of the application were completed by me, and that I may have provided either Eli or Patrick with a copy of my passport and driver licence.*
23. *At no stage did I envisage that false information would be provided in the application. I can't recall but would have emailed or called Patrick or Eli with personal documents, including bank statements, etc*
24. *Patrick and Eli were known to each other as Eli's husband had also worked for the same company.*
25. *I deny that I ever provided information in relation to boarders nor was I aware that such information was provided in the said loan application.*

26. *In relation to the gross salary in the amount of \$85,635 I confirm that this was an accurate amount and that it was verified by bank statements provided.*
27. *I cannot recall the details of other monthly expenses nor can I confirm how this was calculated or obtained.*
28. *In relation to further assets and liabilities I may have had a cheque account with \$925 in it and further I confirm that I had a property overseas with equity of about \$126,000.*
29. *The information in relation to the motor vehicle of \$50,000 is not correct, as my vehicle at the time was only worth about \$32,000.*
30. *I confirm that I did have a credit card with BNZ, however the limit was much more than \$2,000, and from memory it was around \$16,000. I confirm that had a Warehouse card with a limit of \$6,000. I had several other bank and store cards, which were never mentioned in the application.*
31. *I confirm that I was working at SBA however not as an accountant, but as the manager and tax agent, and I was registered with Inland Revenue. SBA is an accounting business and tax agents are frequently referred to in the industry as accountants.*
32. *At the time of signing my contract with SBA dated 23 December 2009 I was employed as a tax agent and manager. My role subsequently changed from employee to contractor.*
33. *I realise now that strictly speaking in the contract with SBA, I should have been noted not as an accountant but as a tax agent, however as noted above the word "accountant" is used in the industry when referred to tax agents.*
34. *I can confirm that the name of Zohreh Sadeghi Gakani is my family name as Azimi was my married name. I can also confirm that this information was held by Inland Revenue and by Barfoot and Thompson.*
35. *In relation to the fact that I was working at Barfoots at the time, I recall Patrick advising that my salary as tax agent was enough to service the loan, and that he would not submit such information in the application. I trusted him as he was an expert in the area as mortgage broker and I did not think that it would cause an issue.*
36. *I therefore confirm that I had no intention at any stage to provide false details to any bank or finance institution and was simply looking at purchasing a property which on my own calculations would have been a viable investment.*
37. *Looking back, it would have been easier for me to simply walk away from this deal instead of providing such claimed false information, as I had nothing to gain from it.*

Patrick Pardo

38. *I need to confirm that at no stage during the above home loan application process did I meet Patrick Pardo in person, despite the fact that he confirmed that he physically identified me and that he verified my income and employment.*
39. *Therefore I am dumbfounded that information may have been provided and confirmed in the loan application, when in fact it was false.*
40. *I confirm that I have always had flatmates and still currently have one, however I have never met or heard of a Massoud Abrishamee and a Tom Lee, nor was I aware that such information was put in the said application.*

*Alleged involvement with fraudulent mortgagee scheme**23 Glenmore Road, Sunnyhills*

41. *I confirm that I negotiated the sale of the property from Dairy Global and Jiangwen Lu to Dana Omidvar for \$568,000.*
42. *I wasn't aware that Dana Omidvar sold the property to her son for \$625,000.*
43. *I also wasn't aware that the same property was transferred to Resource Engineers Limited on 29 October 2007.*
44. *I accept that on 19 April 2009 the property was listed with me by Resource Engineers Limited on 19 April 2009. The owner Mehrdad Ghorbani had financial difficulties. He also had an issue with the Council due to the fact that he was running a shop from the garage without the required consent.*
45. *I had several offers on the property and the vendor was under pressure as a mortgagee sale was looming.*
46. *The property was only listed once with me during this period. I sold the property to Shirin Hasali Pashaie. I had no further dealings with his property.*

3/78 Pahia Road

47. *I confirm that I sold this property to Dana Omidvar for \$272,000 on 18 March 2008. Settlement took place sometime in June 2008. I was not involved in the sale of the property 6 months later.*
48. *The same property was listed for sale with me by the then owner Mehran Ghorbani, who was facing a mortgagee sale. Mehran didn't want the property to end up at a mortgagee sale, as it is frowned upon in the Iranian community. The bank got a valuation and accepted an offer of \$210,000. This is normal bank procedure when there is a default on the mortgage.*
49. *I had no further dealings with this property.*

10B Heretaunga Avenue

50. *From memory the property was listed with Barfoots for \$425,000 and it sold for \$420,000, not \$470,000 as alleged.*
51. *I am unable to comment whether the property was transferred to Mehrzad Ghorbani, however from memory Mehrzad is Dana's son.*
52. *I am further unable to comment whether the property was transferred to Mehrdad, Mehran and Ella Ghorbani.*
53. *I confirm that Mehrzad and Mehrabad Ghorbani on 18 December 2008 listed the same property with me for between \$390,000 and \$440,000 as they were in financial problems. This was again the same situation where the vendors didn't want the property to end up at a mortgagee sale.*
54. *Offers were made on the property namely \$310,000 on 18 January 2009 and \$328,000 on 11 February 2009.*
55. *I confirm that the property eventually sold to Stan Welsh or nominee for \$310,000 on 27 May 2009. The property was listed again by me and Jamie my co-worker at the time, however we were unable to get a deal. The property was later sold by Harcourts.*

My alleged connection with mortgage syndicate

56. *As stated before I deny that I had any knowledge or involvement with the alleged mortgage syndicate. I first became aware of this alleged syndicate when I was interviewed by Chris Delaney. At that stage I wasn't fully aware of the extent of the said syndicate.*
57. *In relation to 241 Church Street, Onehunga, I confirm I have been the registered owner of the property since 24 September 2008.*
58. *I confirm that I was the sales agent to Chandra Goundan and Sarda Goundan in September 2008.*
59. *From memory they had made an unconditional offer of \$452,000 and paid a deposit of \$20,000. This was accepted however they changed their minds shortly after that and they did not want to proceed with the purchase.*
60. *I discussed this with my manager John Endean, a witness in this proceeding and canvassed with him whether I could in fact purchase the said property.*
61. *This was discussed with the vendor and their lawyers and after a certain process was follows, I purchased the said property. I attach a letter from John dated, 19 September 2008 confirming this.*
62. *In relation to 2/23 Copley Street, New Lynn I recall that I sold 2/23 and 2/30 Copley Street to Warren Devoy. Both properties were units in the same development. Before settlement could occur, Mr Devoy indicated that he did not want to proceed with the purchase of both units.*

63. *I agreed that I would instead purchase 2/23.*
64. *At that time I was not aware of the correct procedure to take in such a situation as mentioned in paragraphs 66 and 67 above [sic] and the property was subsequently transferred and registered into my name. I owned the property as a rental for two years.*
65. *I realise now that I should have discussed this with my manager at the time, John Endean.*
66. *I strongly deny that I was encouraged by Ms Devoy to be a real estate agent. I have always loved the real estate industry and passionate about helping people selling and purchasing properties.*
67. *As mentioned earlier, I have been well known in the Iranian community and thrived on the fact that people trusted me. At no stage did I have any complaints in relation to my work ethic.*
68. *I deny that I conspired with Eli Devoy in submitting a fraudulent loan application to purchase 1/3185 Great North Road. If I had known that incorrect information was provided to the bank, I would have immediately cancelled the said application.*
69. *It should also be noted that I did in fact cancel the said application due to the outstanding code compliance certificate.*
70. *I again repeat that I totally reject the allegation that I was involved in a fraudulent mortgagee scheme or that I was aware that such a scheme existed.*

Lisa Kerr

Melica Nejad

71. *I accept that Melica Nejad may have used 241 Church Street as her work address. This property is a commercial building comprising of a few businesses, including a hair salon. At the time I owned and managed a hair salon in the building which was called "241". Melica was employed there at the time of making the mortgage application.*

Dana Omidvar

72. *I was not involved in the sale of 42/2 Cawley Street in April 2011. I accept that Dana Omidvar transferred \$140,000 into my bank account on 23 May 2011. I assisted her in sending money overseas to Iran via an international money exchange company as web [sic] are unable to transfer money directly to Iran and I was able to get the best rates, due to the fact that I had a small import business and got very good exchange rates. She also owed me money from a loan previously.*
73. *I confirm that the money transferred had nothing to do with any of the alleged mortgage fraud.*

Loan application 1/3185 Great North Road, New Lynn

74. *I repeat that I was not aware of the fact that incorrect information was entered and provided in this loan application, nor was I aware that the fact that I had been working at Barfoots at the time was omitted.*
75. *I trusted Patrick the mortgage broker and believed that all information he was providing was legitimate. I totally regret the fact that I did sign a blank loan application and reiterate that at no stage did I envisage that false information would be provided. As stated before, if I had known what was going on, I would have cancelled the application immediately."*

[93] In additional evidence-in-chief before us, the defendant referred to the loan application form and stated that none of the handwriting on it was hers except that the signature was hers. The defendant was extensively cross-examined by Mr McCoubrey. She confirmed the facts covered above but denied any misconduct on her part.

[94] Inter alia the defendant was pressed as to why Ms Omidvar transferred \$140,000 into the defendant's bank account on 23 May 2011. The defendant said that some of that had been owing to her for a long time and that it is difficult to transfer money to New Zealand from Iran, but she could obtain good exchange rates. The defendant seemed to be saying that Ms Omidvar had in the past asked the defendant to send money overseas to Iran on behalf of Ms Omidvar through a Persian network operating such money transfers from Auckland; and that was why Ms Omidvar had paid the defendant the \$140,000. The defendant said "*part I sent overseas, part to the Persian network, and part I swapped*". It was put to the defendant that she must have been close to Ms Omidvar and her family to have undertaken such a financial transaction but the defendant maintained that the Iranian people referred to above were not family but, merely, Iranian friends.

[95] The defendant also maintained that other people put money into her bank account and she would arrange for that money to be sent to Iran for them. Among other things, the defendant seemed to be saying that she had previously borrowed money from Ms Omidvar. She also seemed to be saying that when she handled monetary transactions for others between New Zealand and Iran she charged a 10% commission. The defendant seemed vague about having lent Ms Omidvar NZ\$60,000 in about 2008 and could not explain why that happened. She seemed to be saying that Ms Omidvar and her family were very wealthy people.

[96] The defendant was a confident and fluent witness before us. She said it is common for Iranian people to lend each other large sums of money. She knew that her friends and associates referred to above bought and sold much property. The defendant also seemed to be saying that some of those friends had lost money when their factory in Iran had been closed and that would be why they had defaulted on mortgages to banks in New Zealand.

[97] Mr McCoubrey put it to the defendant that she knew that her friends were involved in a mortgage ramping scheme but the defendant responded that she did not know what "*ramping*" meant. She maintained that she simply did her job as a real estate agent and would list properties for those friends and generally work as a real estate agent in Auckland for the Iranian community. She seemed to be

maintaining that she did not understand the nature of the fraudulent scheme referred to above.

[98] The defendant was also thoroughly cross-examined by Mr McCoubrey about the content of the loan application form and its misinformation. She admitted that she had never been an "accountant" but she was a "tax agent" in New Zealand dealing with the Inland Revenue Department. It was put to her that she could not possibly have been working 40 hours per week as an accountant as stated on the mortgage application form. She seemed to be saying that she had her small business accounting company which she operated with Ms E Devoy, that she (the defendant) was its general manager with two staff and she would do her paperwork in the evenings and work as a full time real estate agent during the day.

[99] The defendant noted that, at material times, she was a single mother and ran a hairdressing business also. She admitted that when she signed the loan application form it was blank. It was put to her to be a false entry in the loan application that she had income from boarders. The defendant responded that she did not know what information Ms Devoy put in the form to be sent to Kiwibank and, with hindsight, she had been "too trusting". She said she did not know how much she was seeking to borrow by mortgage from Kiwibank as she had left that to Ms Devoy. The defendant accepted that on 30 September 2009 she had been the agent when the vendors, friends of hers, purchased the property at a mortgagee sale for \$283,000 and that, at material times, six months later she herself was buying it for \$438,000. The defendant maintained she was simply trying to help the vendors and that she thought it would be a good rental investment property for her. It seems that one of the vendors was the sister of Ms Devoy.

[100] Mr McCoubrey put it to the defendant that she must have known that the loan application being put to the bank by Ms Devoy was fraudulent. In an extensive response, the defendant seemed to be saying she did not know anything like that and was only trying to help her friends.

[101] It was put to the defendant that she knew the Iranian family referred to above very well. She responded that is correct but she knows most Iranians in New Zealand.

[102] Mr McCoubrey put it to the defendant that she had knowingly assisted a fraudulent mortgage scheme. She responded "*I have no idea about that*". It was put to her that she was part of a group which had inflated the prices of properties in order to cause mortgagee sales and losses to mortgagee banks. She maintained "*not true. I didn't have knowledge of this. They came to interview me at Barfoots and that was the first I knew*".

[103] It was put to her that she knowingly provided Kiwibank with false details in a mortgage application in order that she purchase the property in Great North Road. She maintained she did not know of the production of letters from non-existent flatmates or boarders in her then residence, nor had she ever met Mr P Pardo. Earlier she had said that she left the completion of the form and provision of information to the bank entirely to Ms Devoy as a mortgage broker.

[104] In re-examination of the defendant, it emerged that the defendant had built up a fund of money in Iran from a rental property there over many years. That property had been her father's home and, about 11 years previously, she had purchased a

further property in Iran for renting. She also explained that the Persian network in Auckland was a shop *"where you put up money and it was transferred by a person to Iran but not through a bank. The network has funds in Iran and it just swaps it for New Zealand money so that no money leaves either country and bank accounts are used at each end i.e. in New Zealand and in Iran"*.

The Stance of the Defendant

Charge 1 – Allowing a fraudulent loan application to be made in her name for the purchase of 1/3185 Great North Road, Auckland

[105] The defendant has acknowledged that information provided regarding flatmates was false. She also acknowledged that she had not previously worked for an *"accounting"* firm in Mount Albert. She acknowledged that she was not a qualified accountant but was a registered tax agent. It is put that the industry is referred to as an accountant.

[106] She had further stated to us that she was working full time (40 hours per week) as the only tax agent and the manager of the branch. She stated that she was able to manage this as her work commitment as a real estate agent was flexible and not a full time position, and that she was therefore able to maintain several positions at the same time.

[107] She trusted Ms Devoy and Patrick Pardo to deal with all matters on her behalf in relation to the loan application.

[108] She acknowledged that she had dealt with and completed numerous sale and purchase agreements as a real estate agent but it was put for her that she never was, nor claimed to be, an expert in loan applications and their requirements.

[109] Her counsel, Mr Hislop, referred to her assertion that at no time was she aware that fictitious information was being submitted to Kiwibank on her behalf in the said loan application and, had she been aware of the situation, she would have withdrawn the loan application immediately. We are asked to note that the loan application was in fact withdrawn by the defendant fairly soon after being submitted, due to an unresolved outstanding code of compliance.

[110] It is submitted by Mr Hislop that charge 1 against the defendant should be dismissed as the defendant's application for the said home loan does not fall under the definition of *"real estate agency work"* as specified in the Act. It is put that this is because it related to a private sale and purchase agreement, the defendant being the purchaser, which occurred six months after the defendant's original involvement as real estate agent when the vendors to her had purchased that Great North Road property. However, the conduct with which s.73(a) is concerned need not be confined to real estate agency work.

[111] In relation to the actions of the defendant when referring to the sales of the subject properties, Mr Hislop concedes that she was involved on three occasions, namely:

- [a] Glenmore Road on 31 July 2007 and again 31 July 2009;
- [b] Paihia Road on 30 April 2008 and again 30 April 2010;

[c] Heretaunga Avenue on 31 August 2007 and again 27 May 2009.

[112] It is submitted that more than a substantial time had expired from the original sale of the properties, when she acted again as agent i.e. two years later in each case.

[113] It is also submitted that, in her evidence, the defendant gave a reasonable explanation of her involvement in the re-sales two years later in that she was approached by the vendors as they trusted her as a member of the Iranian community, they had financial difficulties, and that they did not want to "end up" (as it was put) at mortgagee sales.

[114] It is therefore submitted by Mr Hislop that it cannot be inferred that the defendant was party to or had knowledge of the alleged actions of the syndicate.

[115] Mr Hislop referred to the defendant's evidence that, if such a syndicate was operating (which is not accepted), she had no knowledge of its actual operation. He submits that the fact that the defendant was well acquainted to members of the alleged fraudulent scheme, does not indicate that she was part of or aware of the actions of the alleged fraudulent scheme.

The Final Submissions for the Prosecution

[116] Mr McCoubrey noted that it is not challenged that there has been a mortgage - ramping scheme. He agrees that relevant questions are: what did the defendant know about that scheme; and what were her intentions regarding her conduct at material times?

[117] Mr McCoubrey observes that there is a stark contrast between being a knowing participant offering assistance to members of the Ghorbani family, and their associates, and being a touchingly naïve person who had no idea of what those people were about.

[118] Mr McCoubrey accepts that the defendant was not engaged on every sale and purchase transaction during the continuance of the scheme but that for each of the three properties mentioned above she was involved on two or three transactions. He observed that this is not surprising because, if she had been involved as an agent on every occasion when these properties changed hands which was always quickly and sometimes on the same day, it would have been too obvious that she was involved in the mortgage ramping scheme.

[119] As Mr McCoubrey stressed, when the defendant was involved on the various transactions involving the same property, the vendor was always a different member of the Ghorbani family so that the defendant must have known what was taking place, or she should have, and she had records regarding each property showing the history and pattern of sales and purchases and the relevant prices.

[120] With regard to the loan application related to her efforts to purchase the Great North Road property, Mr McCoubrey noted that, at least in her evidence to us, the defendant accepted that the reference to her having boarders and income from them was fictitious and that she had not been an "accountant" in Mt Roskill for three years. He also referred to her employment contract with the Small Business Association and submitted that it could not have been signed by her in good faith because it

described her as being employed as an "*accountant*" when she was not an accountant, but merely a tax agent. Also, in that contract she undertook to work 40 hours per week between 9.00 am and 5.00 pm when that could not have been genuine, because she was a full-time real estate agent and also the manager of a hairdressing salon; but her employer was being led to believe that she was working for it as a full-time accountant.

[121] Mr McCoubrey submits that the mortgage application for Great North Road was dishonest and that she had provided the form in blank for Ms Devoy to complete and that the people involved with the transaction were the same people as those involved in the mortgage ramping scheme.

[122] Mr McCoubrey also pointed out that the defendant must have known that the vendors had purchased the Great North Road property six months earlier for only \$288,000 but were attempting to sell it for her at \$438,000. Mr McCoubrey acknowledged that there had been an appraisal report for the property at \$438,000 but put it that there could not have been a genuine mortgagee sale six months earlier at \$282,000.

[123] Mr McCoubrey pointed to the bank statements showing a full time salary being paid to the defendant from the Small Business Association when she was busy on two other jobs at the same time as a real estate agent and manager of a hairdressing salon.

[124] Mr McCoubrey submitted that even if the various frauds of the scheme were not being committed by the defendant, but by her friends and associates, she at least knew what was happening and facilitated that by providing a blank mortgage application form and agreeing to buy the Great North Road property if Kiwibank would provide a mortgage loan to her. Mr McCoubrey emphasised that the mortgage application form did not show her to be a real estate agent but held her out as an accountant and as if she was a bona fide purchaser.

[125] As an alternative to the first charge, Mr McCoubrey also put it that, as a real estate agent, the defendant would know the importance of raising finance in a genuine and honest way for a mortgage over a residential property and that, even on her own account, she has signed a blank loan application document, handed it over, and then had no more involvement with it. She has allowed others to fill it in and supply the bank with fraudulent details about her. Mr McCoubrey submits that is so reckless as to be misconduct in itself.

[126] With regard to the second charge, Mr McCoubrey put it that there is the unchallenged evidence of Ms Kerr that the name of Barfoot & Thompson on an agreement for sale and purchase implies to most people that the transaction is genuine. He referred to the list of transactions and to the sales records showing a concerning pattern of names of vendors and purchasers. Mr McCoubrey emphasised that it is obvious that, with regard to these properties and the many transactions relating to them, the parties were not simply property speculators but were making sales from a member of the family to another member of the family, and similar sales and purchases continued between such people of the same properties.

[127] With regard to the defendant's explanation that some members of the family had lost money by the closure of a factory in Iran so that many in the family needed to default on bank mortgages; Mr McCoubrey puts it they were, nevertheless, still a

very wealthy family and the mortgage sales referred to did not come about due to financial pressure but were done wilfully to cause the properties to be sold at a cheap price at a mortgagee sale, enable another member of the family to buy them, continue the fraud, with banks losing loan monies throughout the scheme. Mr McCoubrey stressed that the defendant knew all those involved in the scheme very well and understood the family links in all these transactions. He also observed that it was curious, and not convincingly explained, why the defendant would be lending Dana Omidvar \$60,000 to \$70,000 and some years later, in May 2011, Ms Devoy would pay \$140,000 into the defendant's bank account and that money seemed to come from the matriarch of the Ghorbani family.

[128] Mr McCoubrey submits that, because of all the links referred to above, the defendant must have known that there was a mortgage scam scheme operating and that, by being shown as a credible real estate agent on much of the documentation, she was facilitating the scheme. Mr McCoubrey emphasised that the defendant could not be a naïve person because she was a tax agent for our Inland Revenue Department, a business manager, claimed to be some sort of accountant, and was a very successful real estate agent dealing in large sums of money.

[129] Mr McCoubrey submits that the defendant did not present as a credible witness.

[130] Simply put, it is submitted for the prosecution that, even if the defendant did not quite know that there was a mortgage scam operating, she was so reckless in the said relevant business transactions as to meet the test of misconduct. We agree.

Our Views

[131] Our unanimous assessment of the defendant as a witness is that she is not a credible witness and we consider that there is not much truth in her evidence in relation to the issues before us.

[132] We consider that there has been "*misconduct*", in terms of the definition of that in s.73 of the Act, by her in signing a blank form for a mortgage broker to use to arrange a mortgage for her to buy real estate, and then taking no interest in the information about her inserted into the blank form, or attached to it, much of which proved to be false. She simply was not "*an accountant*" who worked for the Small Business Association for \$85,635 p.a. at 40 hours per week on contract nor did she receive income from two fictional boarders. Also she knew, or should have known, that those in control of the blank mortgage application form were part of a mortgage ramping operation.

[133] We also consider that the defendant's conduct in allowing the use of her name, and that of Barfoots, on sale and purchase transactions involved in a mortgage ramping scheme conducted within the wide Iranian family referred to above was misconduct; because she either knew that their real estate activities were fraudulent or she must have inferred that.

[134] It is also puzzling that the defendant cannot explain why she lent the matriarch of that family \$60,000 to \$70,000 a few years ago, nor why that matriarch's daughter and the defendant's good friend and business partner, Ms E Devoy, paid \$140,000 into the defendant's bank account as covered above.

[135] The statutory standard of proof is the balance of probability; and the onus of proof is on the prosecution. We find the charges outlined above to be proven by the prosecution (i.e. the Real Estate Agents Authority) against the defendant in all respects. Accordingly, we now direct the Registrar to arrange a directions hearing between counsel and our Chairperson to set a timetable towards a hearing on penalty.

[136] 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 J Gaukrodger
Member

Ms C Sandelin
Member