

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2014] NZREADT 93

READT 014/14

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

BETWEEN **DAVID SHARMA**

Appellant

AND **REAL ESTATE AGENTS
AUTHORITY (CAC 20004)**

First respondent

AND **DR MARIE NIXON**

Second respondent

MEMBERS OF TRIBUNAL

Ms K Davenport QC – Chairperson
Mr G Denley – Member
Ms C Sandelin – Member

HEARD at AUCKLAND on 24 October 2014

DATE OF DECISION 21 November 2014

APPEARANCES

Mr Noble, for the appellant
Mr L Clancy, for first respondent
Dr M Nixon, second respondent

DECISION OF THE TRIBUNAL

[1] On 25 September 2013 the Complaints Assessment Committee found that Mr David Sharma was guilty of unsatisfactory conduct in his sale of Dr Nixon's property at 2/16 Frank Evans Place, Henderson. The basis on which he was found to be guilty of unsatisfactory conduct was that he failed to comply with Rule 9.5 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009 in that he did not give an appraisal of land in writing to the client which showed the current market conditions supported by comparable information on sales of similar land in similar locations or businesses. The Complaints Assessment Committee found that the letter of 2 July 2012 written to the complainant did not comply with Rule 9.5. The letter says:

“The figures available from statistics only give an approximate guide to the market value and after some further research they indicate a sales value of approximately \$395,000 - \$405,000.”

[2] Dr Nixon had made other complaints concerning the conduct of Mr Sharma including:

- His failure to treat her tenants well;
- His failure to consult her and inform her on all matters concerning the tenants and the sale of the property;
- The signs were placed in the wrong position;
- She did not agree with the sale taking place on Sunday 12 August 2012.

[3] The Complaints Assessment Committee dismissed these complaints and Dr Nixon does not cross appeal. The Tribunal therefore will not consider these complaints in any more detail except to say that it was clear that Mr Sharma did not market her property in the way that she had expected.

[4] However the only issue before the Tribunal today is the question of whether or not Mr Sharma has complied with Rule 9.5. Dr Nixon says that she did not receive any market appraisals from Mr Sharma. She claims that she did not receive the 2 July letter advising her of any assessment of the likely market value of the property or any price suggestion in writing other than the verbal comments from Mr Sharma. Dr Nixon says she was never provided with any Comparative Market Analysis (CMA) or any type of valuation or market appraisal when she either enquired about listing her property or when her property was listed, either in hard copy or in electronic version. She said the documents dated 2 July which had been provided to the Tribunal had never been seen by her. In her evidence before the Tribunal Dr Nixon also disputed that they were given to her on 2 July saying that this was a Monday and she was never in Auckland on a Monday. She did however acknowledge signing the listing agreement on Monday 9 July 2012 but said that no price was put on the agreement as this was always to be auctioned.

[5] Mr Sharma insisted that he had given Dr Nixon a CMA. He said that the letter of 2 July 2012 that was prepared for Dr Nixon contained the auction marketing programme, the proposed marketing calendar, the Approved Real Estate Agency Agreement Guide and a document called "CMA for 16B Frank Evans Place, Henderson. The Tribunal have a copy of a letter dated 2 July 2012. Mr Sharma acknowledged that this was not a proper market appraisal and said that in addition to this letter there was also provided a stapled bundle of documents which had been downloaded from a programme called RPNZ which contained recent sales in the area for comparable properties. He said that this had somehow got lost and he no longer had a copy of this document but he was adamant that it had been provided to Dr Nixon. He called evidence from his former PA, Ms Julie Ralph, who said that she prepared the CMA, which was a bundle of sales data, and it was saved in .pdf form on the computer. Ms Ralph considered that this document must have been given to Dr Nixon although she does not recall actually doing that.

Further evidence

[6] Dr Nixon provided medical certificates to show that she had been ill at the time on 5 July she attended a medical centre in Mangere Bridge. This showed that she was not in Auckland prior to that time. Mr Sharma also asked for further time to search his computer to see whether the .pdf document could be found and also to contact RPNZ to see whether they would have a record of a search being done for this property in early July 2012.

[7] Mr Sharma could provide no further evidence.

[8] Having considered this evidence and being aware that the balance of probabilities requires Mr Sharma to prove the case we find as follows:

1. That there is insufficient evidence to support the conclusion Mr Sharma gave to Dr Nixon the printed market report appraisal.

This issue was first raised in the complaint that Dr Nixon made in September 2012 and it was not until the hearing that Mr Sharma sought to see whether the CMA document could be found electronically or from the RPNZ. He had taken no steps to locate it prior to this time. It is highly possible that Mr Sharma prepared such a document but then, as he says in his evidence, he did not feel that the comparative sales data produced a sales figure that Dr Nixon would have been happy with. Accordingly he prepared the letter with a different suggested sale price. We have concluded he chose not to give this to Dr Nixon. From the evidence that we have in front of us we conclude that letter only was all the market appraisal given to Dr Nixon. Mr Sharma's obligation extended not only to obtaining comparative data but also providing this to the potential vendor. Dr Nixon is adamant that she does not have it and has not received it. The fact remains however that there was correspondence produced and signed on 2 July 2012 which is a contemporaneous record of what was done by the agency at that time and was retained by the agency. We can therefore say with some certainty that a marketing calendar, a marketing proposal and the letter of 2 July was certainly prepared for Dr Nixon. However we cannot conclude that the CMA was provided.

[9] Accordingly we uphold the decision of the Complaints Assessment Committee and do not find that Mr Sharma has discharged the burden upon him to prove that he did provide to Dr Nixon a CMA.

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

Ms K Davenport QC
Chairperson

Mr G Denley
Member

Ms C Sandelin
Member