BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2015] NZREADT 13

READT 016/14

IN THE MATTER OF	an appeal under s.111 of the Real Estate Agents Act 2008
BETWEEN	**PETER AND SANDI FREARSON**
	Appellants/Complainants
AND	**REAL ESTATE AGENTS AUTHORITY (CAC 20009)**
	First respondent
AND	**ALAN GRIFFITHS**
	Second respondent licensee

MEMBERS OF TRIBUNAL

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

HEARD at MORRINSVILLE on 14 August 2014 and 4 December 2014

DATE OF THIS DECISION 13 February 2015

REPRESENTATION

The appellants on their own behalf
Ms N Copeland and (on 4 December 2014) Ms J MacGibbon, counsel for the Authority
Mr J Waymouth, counsel for the licensee

DECISION OF THE TRIBUNAL

Introduction

[1] Did the real estate agent know, or should have known, but did not disclose to purchasers of a rural residential property that its water supply was of inferior quality and the septic tank defective?

[2] Mr and Mrs P Frearson ("the complainants") appeal against the 17 January 2014 decision of Complaints Assessment Committee 20009 to take no further action against Mr Alan Griffiths ("the licensee") who holds a salesperson's licence and works for Gibson Barron Realty Ltd, trading as L J Hooker in the Matamata area.

Factual Background

[3] The licensee listed 208 Livingstone Road, Te Poi, Matamata ("the property") as a general listing with the agency on 1 November 2011. The property was also listed as a general agency with Bayleys Real Estate at Matamata. According to the licensee, he made enquiries of the vendors in relation to the property's water supply and the septic tank at the time of listing. The licensee says that the vendors told him that the water supply came via an easement from a neighbour's farm bore and that the septic tank had been cleaned on 13 February 2012.

[4] The licensee states that the vendors told him the water was fine and he had no reason to doubt what they said. He said that he did notice that there was no sand trap to filter iron, which is standard for properties of this era if issues existed with iron quality. However as the vendors had said the water was fine he accepted that in good faith. The licensee also stated that he did not notice any telltale signs, e.g. stains in the sinks, bath or toilet, and there was nothing to alert him to any water quality problems.

[5] In relation to the septic tank, the licensee stated that there were no obvious tell-tale signs, such as *"green patches"*, which are synonymous with leakages around the tank and which could indicate blockages. There were also no odours or running sewage which can be signs that the septic tank is not working properly.

[6] The licensee stated that the vendors signed the warranties on the listing agreement that the property information they supplied to the agency was correct in all respects.

[7] In August 2012 the complainants viewed the property with Ms Corina Collins of Harcourts as there was a conjunct agreement between the agency and Harcourts at Matamata and the licensee. The complainants say they asked the vendors and the licensee if the water was *"ok"*. The vendors replied that the water and hot water cylinder were both fine.

[8] On 31 August 2012, the complainants signed a sale and purchase agreement for the property with Ms Collins. The agreement required them to complete extensive pre-purchase disclosure in relation to a LIM, builder's report, and valuation.

[9] The licensee says that the complainants also undertook due diligence with the water provider next door and were advised by that neighbour that the water was *"ok"* but it needed extra filtration. The licensee stated that, after the complainants were advised of this, they decided to install the extra filtration on their own volition. The contract was cancelled after the house inspection found a number of issues which the vendors were not prepared to remedy.

[10] About a month later, the complainants contacted the licensee to enquire whether the property was still for sale. The licensee advised that the vendors were taking the property off the market.

[11] However, Ms Collins later contacted the vendors on behalf of the complainants and, subsequently, on 6 November 2012 the complainants entered into a further sale and purchase agreement on the property. The licensee says that, because of the short time period between the first and second offer, the complainants chose not to get a LIM or building report and the second agreement was made subject only to finance. The complainants dispute this, and say they had to get a LIM report as their

bank required that. The agreement became unconditional and settlement took place on 29 November 2012.

[12] According to the complainants, the vendors were happy for the complainants to have contractors come and repair the property before their moving-out date, except they would not let the complainants switch the water supply over to the new pump they had installed. The licensee stated that he did not find this unreasonable and the decision by the vendors to deny the complainants the right to cut into the new system was taken under legal advice.

[13] On settlement day the new pump was switched on and the water was muddy and sludgy. The complainants stated they then had the water tested by Ag-Worx and were told that the water was unsafe to drink due to its high iron and magnesium levels.

The Committee's 17 January 2014 Decision

[14] The Committee was of the view that, on the balance of probabilities, the licensee did not breach any obligations under the Real Estate Agents Act 2008 ("the Act") or the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009 ("the Rules") with reference to Rules 6.4 and 6.5 because he was unaware of any water quality issue and there was no event or facts that should or could have alerted him to the issue. The Committee also noted that the complainants had made their own inquiries and inspections and these did not reveal any issues with the water.

[15] The Committee had set out the material facts in detail and its considered reasoning for its decision comprises the following:

> *"4.3 We note that when the complainants viewed the property with the licensee and Ms Collins and were asked the question about the water quality, both the licensee and the vendors said it was fine.*
>
> *4.4 The Committee must now consider whether the licensee did in fact know or ought to have known that the property may have a defective water supply and if it was known by the licensee was it withheld from the complainants at the time of purchase.*
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> *4.5 The Committee must further consider whether the licensee, although not required to discover hidden or underlying defects in the land, had certain responsibilities where it may appear likely to the licensee that the land may be subject to hidden or underlying defects such that in this situation he should have been alerted to the potential for the property to have a defective water supply.*
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> *4.6 At the time of listing the property the licensee stated that he did notice there was no sand trap to filter iron, which was standard for properties of that era, if issues existed with iron quality, however the vendors had said the water was fine and he accepted that in good faith.*
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> *4.7 The Committee accepts the licensee did not see any tell-tale signs like stains in the bath, sink or toilet and there was nothing to alert him to anything that may indicate there was a problem with water quality. We accept that unless the licensee had had good cause to suspect the*

vendors were not telling the truth, or by his own observations became aware of defects with the property then the licensee had no choice but to rely on what the vendors told him.

4.8 We note that the complainants made their own inquiries and inspections and that these did not reveal any issue with the water.

4.9 Accordingly, the Committee is of the view that on the balance of probabilities the licensee has not breached his responsibilities or obligations under the Act or the Rules in relation to his duty to the complainants because we find he was not aware of the issue and there was no event or facts that should or could have alerted him to the issue, and as a result the Committee has decided to take no further action in relation to this part of the complaint.

4.10 In the second part of the complaint the Committee also had to consider whether the licensee, although not required to discover hidden or underlying defects in the land, had certain responsibilities where it may appear likely to the licensee that the land may be subject to hidden or underlying defects such that in this situation he should have been alerted to the potential for the property to have repairs needed to its septic tank.

4.11 The licensee said that at the time of listing the property there were no obvious tell-tale signs such as "green patches" which is synonymous with leakages around the tank which would indicate blockages. Furthermore, he said there were no odours or running sewage which can be signs that the septic tank is not working correctly.

4.12 Again, unless the licensee had had good cause to suspect the vendors were not telling the truth, or by his own observations became aware of defects with the property then the licensee had no choice but to rely on what the vendors told him.

4.13 Accordingly, the Committee is of the view that on the balance of probabilities the licensee has not breached his responsibilities or obligations under the Act or the Rules in relation to his duty to the complainants in this part of the complaint and the Committee has decided to take no further action."

Salient Evidence

The Evidence of Mrs S Frearson (as a complainant purchaser)

[16] The evidence for the complainants was mainly given by Mrs Frearson. The concern of the complainants is that the water supply at the property has been assessed by Hill Laboratories as unsafe to drink, and treatment is required to remove iron and manganese from it. Also, it appears that low levels of nitrate-nitrogen are found in the water even though the complainants fitted filters soon after settlement of their purchase of the property.

[17] The complainants blame Mr Griffiths (the licensee) for their predicament. They say they are unable to afford to rectify the water and sewage problems at the property and they feel *"duped"*, as Mrs Frearson puts it.

[18] Mrs Frearson said that she and her husband thoroughly investigated the standard of the property to the best of their ability prior to purchasing it and were made aware of aspects such as dangerous electrical wires, lack of insulation, the need to reseal windows, and similar matters. The complainants consider that the Committee's decision over-favoured Mr Griffiths as a licensee and that they, as complainants, should receive compensation.

[19] The complainants assert that an experienced real estate agent, such as Mr Griffiths, should have picked up what they refer to as *"red flags"* and better investigated the standard of the water supply and septic tank at the property. They say he was familiar with the property and knew the vendors. They do not accept that he saw no tell-tale signs because they are constantly cleaning sediment out of the bottom of the bath and shower and that there are stains and *"grunge"* on the sinks, toilet, shower and bath; but suggest these areas must have been thoroughly cleaned by the vendors as they marketed the property.

[20] The complainants' attitude is *"what are real estate agents for?"*.

[21] Inter alia, they say that they need to purchase a water purifying system to cope with eradicating manganese and iron from the water, and they have researched and found such a system but cannot afford it. They seem to be also asserting that the flow-rate of the water at the property is too weak and that they cannot even wash their car with a hose, let alone put out a fire.

[22] They say also that the sewage pit needs to be replaced.

[23] Essentially, the complainants maintain that there has been misconduct by the licensee in not disclosing to them the potential for problems with water and sewage at the property; so that they believe they are entitled to compensation and reparation from him of about $15,000 which, they say, would at least allow them to have the water problems rectified.

[24] Under cross-examination, Mrs Frearson covered, inter alia, that she and Mr Frearson had closely scrutinised the property in the months prior to their purchasing it and were assured by the vendors that the water pressure was fine. They say that Mr Griffiths also said the water pressure was fine. They did not think to ask about the quality of the water

[25] They pointed out that Ms Collins (a later witness before us) was their agent from a Harcourts agency in the area but that Mr Griffiths was the listing agent and one of the salespeople for the property at Gibson Realty.

[26] It emerged that the complainants took quite some months to complain to the Authority, and this was because they had filters fitted (soon after their purchase of the property) which after a while did not work; and the Christmas holiday season had come about so they had the water tested by Hill Laboratories and were firmly told not to drink it.

The Evidence for the Licensee

The Witness Mrs D Crabb

[27] Mr Waymouth first called Ms D Crabb who, at material times, was a licensed salesperson with Success Realty Ltd at Matamata. She produced a listing agreement and a flyer about the property with an information sheet. She continued her evidence-in-chief as follows:

> *"5. At the time I undertook this listing I inspected the property, (and I am aware of tell tale signs when there are issues with respect to the water as I have considerable experience with properties relying on bore water) I wasn't aware that there was anything possibly wrong with the water or the septic tank.*
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> *6. In response to my usual request regarding water to the Lindegreens [the vendors], they confirmed to me that they had a good water supply by way of an easement from the farm next door. They certainly gave no indication that there was any problem with either the water or the septic tank.*
>
> *7. I called in on the Lindegreens from time to time during the six or seven years that they were there and at no stage was I told by them that there was anything possibly wrong with their water supply.*
>
> *8. From my inspection of the property at the time of listing and from the discussions I had with Mr and Mrs Lindegreen, I was satisfied that there were no issues with the water."*

[28] Ms Crabb noted that the listing agreement showed that water to the property came by easement from a bore on the neighbouring farm because, decades previously, the property had been subdivided off that farm.

[29] Ms Crabb said that she knew the tell-tale signs of issues with water and there were no such signs of any water discolouration. Indeed, she had sold the property to the vendors seven years earlier and called in on them from time to time and is confident that she would have been told by them if there were any issues with the water supply.

The Evidence of Ms C G Collins

[30] At material times, Ms Collins was a licensed salesperson at the Matamata office of Harcourts. She knows the complainants well because she sold them the property. Inter alia, she noted that, prior to finally contracting to purchase the property, the complainants *"contacted the appropriate parties regarding the house water and the filtration system for the house water"* and she referred to *"spudco"*. She seemed to be saying they were aware of a possible water pressure issue but that the vendors had not made them aware of, as she put it, *"the full extent/implications of all the water problems"*.

[31] Ms Collins said that the complainant purchasers were prepared to install a UV filtration system for $5,000 at their cost *"as they believed this was the only issue that required fixing"*.

[32] Ms Collins added that she did not detect any iron in the water through staining or the like and that, from her knowledge and enquiries, there were no issues regarding the water to the property at the time when she assisted in the negotiations and the sale contract to the complainants.

[33] Ms Collins made it clear that she was the selling agent to the complainants who were her clients, as she put it. She could not recall there being any issues regarding the quality of the water at the property but now seems to feel that the vendors had not disclosed them to anyone. She thought that the vendors obtained their water from a bore or well in the Kaimai Ranges, near Tauranga, as many others did and were not disclosing that, over the years, they had needed to do that.

[34] Under cross-examination from Ms Copeland, Ms Collins said that the complainants inspected the property meticulously prior to their purchase and asked many probing questions. She recalled them turning on the shower to check water pressure and quality but felt that the complainants, as prospective purchasers, were more concerned about water pressure and did not think to be concerned about water quality.

The Evidence of Ms J R Hilliar

[35] At material times, Ms Hilliar was a salesperson with L J Hooker at Matamata having over nine years experience in the real estate industry. She is the licensee's partner and was present at the time the property was listed by the vendors. She said that the sale of the property was conjunctional between herself as the listing salesperson and the said Ms C Collins from Harcourts in Matamata. She explained *"as the Frearsons as buyers were customers of hers not mine"*. However, Ms Hilliar was not directly involved in displaying or showing the property to the complainants but was *"only the listing agent"* as she put it.

[36] Ms Hilliar had recorded that Mr Frearson had done due diligence on the water supply with the water providers from the property next door and said that those neighbours had told him the farm water system at 208 Livingstone Road required extra filtration and that is why the complainants installed a new filtration system and water supply just before settlement of their purchase of that property.

[37] Ms Hilliar said that, at the time of listing, she and the licensee made full enquiry about water supply to the property and had noted *"water is from Chapmans = easement"* and below that had written the words *"septic tank"*. She added that the licensee had then asked the vendors when the septic tank had been last cleaned and whether they had any problems with it. They advised that the septic tank had been cleaned in early 2012 and there was no suggestion of any issues regarding it.

[38] Ms Hilliar said that she made a visual inspection and could discern no visual issues. She says that she has knowledge to ascertain when a septic tank has problems and that there are obvious tell-tale signs, but none of those were present in this case. She particularly mentioned that there were never any signs of *"green patches"* which would be synonymous with leakages around the tank which, in turn, could indicate blockages. She said that there were no external signs of problems or any indication that the septic tank was not working properly.

[39] Ms Hilliar emphasised that the vendors had told her and the licensee that the vendors had no issues or problems with the water supply. She again emphasised

that the complainants undertook a very comprehensive presale inspection of the property.

The Evidence of the Licensee, Mr A J Griffiths

[40] Much of Mr Griffiths' evidence has been covered above.

[41] Mr Griffiths stated that he relied on, and honestly believed he was entitled to do so, on the representations made by the vendors about the septic tank having been cleaned in early 2012 and that it was functioning correctly. He lives in a rural lifestyle block and knows how to ascertain when there are problems with a septic tank.

[42] He also seemed to be maintaining that, if any representations were made to the complainants, those representations were made by the vendors and not by him.

[43] With regard to the water supply, he had noted that there was no sand-trap (to filter iron) which he regarded as standard for properties of that type if issues existed with iron quality or effect in the water. He also noted that there was no gas-aided double-washback filtration system to filter iron which, he said, is a more modern way to treat iron. He seemed very knowledgeable about water supply systems especially in the relevant area. He said he had no reason to doubt the vendors when they said that the water system was fine and there were no stains or smells to suggest *"bad water"* and he often had coffee at the house when he went to visit the vendors.

[44] Mr Griffiths emphasised that he was not the principal agent for the complainants but added *"although I did have duties to them"*. He emphasised that in terms of Rule 6.5 there was nothing to trigger him and to make him believe there was, as he put it, a necessity to satisfy Rule 6.5(a) or (b) (set out below).

[45] Of course, Mr Griffiths was extensively cross-examined.

[46] It seems that a water supply from a nearby farm bore, by registered easement, is a common method of water supply in the area and the first question he always asks prospective vendors is whether there are any water supply problems. By trade he has been a drainage and trenching contractor so that he feels he knows tell-tale signs of water supply problems, and appropriate solutions, and asserts there were no signs in this case.

[47] He opined that the system installed at the time of settlement by the complainant purchasers was quite different from that used by the vendors in that the complainant purchasers had installed pressure pumps, rather than rely on a gravity feed, and had changed from an electricity based system to a gas based infinity system which stirs up sediment and carries it throughout the piping system in the house.

[48] Mrs Frearson's point to Mr Griffiths was not that they disagreed particularly over events but that Mr and Mrs Frearson simply cannot drink the water in the house marketed by Mr Griffiths unless they spend the money in terms of the specification from Hills Laboratories. Mrs Frearson's concern with Mr Griffiths is, as she puts it, *"no one told me to get the water tested"*. She meant with regard to quality.

[49] Under cross-examination from Ms Copeland, there was emphasis on whether Mr and Mrs Frearson had merely asked agents, or the vendors, if the water was *"okay"* and the response was that it came by easement from the adjoining farm where there was a bore. Mr Griffiths said that he did not point out to the

complainants that they should get the quality of the water checked because there was no reason to doubt its quality at that time, and his focus was on the satisfactoriness or otherwise of the supply of water.

Our 18 August 2014 Memorandum to the Parties

[50] After the substantial hearing of this appeal at Morrinsville on 14 August 2014, we advised the parties by memorandum, inter alia, as follows:

> *"[2] Just before the complainants would have presented their final submissions to us, we advised all parties that we feel there is a gap in the facts as to how the state of affairs arose which Mr and Mrs Frearson complain about. We noted that we were tempted to dispose of the appeal on what we had heard (but also with Mrs Frearson making final submissions) and, hopefully, bring closure to this dispute. However we stated that, after careful thought, we unanimously felt that we (i.e. this Disciplinary Tribunal) should summons Mr and Mrs Lindegreen as the vendors of the property to Mr and Mrs Frearson to tell us about the quality of the water available at the property at time of sale from them to Mr and Mrs Frearson and the then state of the septic tank facilities. Also, of course, they would be cross-examined on those matters.*
>
> *[3] We feel that it is important that, if at all possible, we endeavour to get to the truth of how the concerns of the complainants arose and the state of knowledge of all those involved in this case at material times. That might assist the complainants but it should bring clarity to whether there has been any failure in conduct by not only the second respondent licensee, Mr Griffiths, but also by any other agent involved in the sale transaction from Mr and Mrs Lindegreen to Mr and Mrs Frearson.*
>
> *[4] As we understand our powers, if necessary we can join other parties to these proceedings.*
>
> *[5] All parties seemed to support our decision to so summons Mr and Mrs Lindegreen."*

[51] Accordingly, this case reconvened on 4 December 2014. This led to the vendors Mr and Mrs Lindegreen, very helpfully, coming and giving evidence on the above issues before us.

The Evidence of Mr M Lindegreen

[52] The vendor Mr Lindegreen confirmed that he and Mrs Lindegreen had lived at the property for nine years and used the water for all day to day use without any concerns.

[53] He observed that the structure of the water supply was changed by the complainants just prior to their moving into the property. They had a number of contractors arrive just prior to settlement to change the water supply from electricity to gas and to install a water tank. He said this included digging up the lawn, drilling in the side of the house, and workman under the house; so that the complainants never experienced the water supply in its original format.

[54] Mr Lindegreen also stated that the septic tank was in good working order at sale and he wonders whether the work under the house by the contractors on the day of the sale could have contributed to the issues which the complainants now have with the septic tank.

[55] Under careful cross-examination he stated that he and his wife had not needed a filter for their water; nor did they have water pressure problems although, he put it, *"the shower was not fast but usable"*. He said that the cold-water pressure was strong but the hot water pressure not as strong as that. He said they took drinking water from their taps without any issues.

[56] With regard to the sewage system, he seemed to be saying that it was a fairly small system and well-satisfactory for two people (as used by the vendors) and he knew nothing about there being a broken and semi-repaired lid to the septic tank.

[57] Under cross-examination from Mr Waymouth, Mr Lindegreen confirmed that there were simply no issues for him and Mrs Lindegreen to have raised with real estate agents about water and he confirmed that to Ms McGibbon also. He emphasised that the water was from a bore in the ground and not rain water, and that the vendors' dishwasher ran perfectly well with it.

Evidence from Mrs Lindegreen

[58] Ms Lindegreen endorsed the said evidence from her husband and stated that she had used the water *"for all normal uses"* and there was no reason why she should have told any real estate agent anything about the water.

[59] She also stated that *"we had no problems with the septic tank and it was clean in February 2012 the same year we sold"*.

[60] Under cross-examination from Mrs Frearson, Mrs Lindegreen emphasised that she and her husband had had no problems with their septic tank system. She confirmed that to Ms McGibbon and stated that the vendors had no problems over water which they drank and used in the usual way for the nine years during which they lived in the property.

Discussion

[61] Rules 6.4 and 6.5 read as follows:

> *"6.4 A licensee must not mislead a customer or client, nor provide false information, nor withhold information that should by law or fairness be provided to a customer or client.*
>
> *6.5 A licensee is not required to discover hidden or underlying defects in land but must disclose known defects to a customer. Further, where it appears likely, on the basis of the licensee's knowledge and experience of the real estate market, that land may be subject to hidden or underlying defects, the licensee must either-*
>
> *(a) obtain confirmation from the client that the land in question is not subject to defect; or*

> *(b) ensure that a customer is informed of any significant potential risk so that the customer can seek expert advice if the customer so chooses."*

[62] The appellants allege that the Committee's decision was wrong over whether the licensee failed to disclose issues with metal in the water supply and repairs required to the septic tank; and/or failed to inform them of the potential risk having regard to his knowledge and his experience.

[63] The Authority submits that the decision to take no further action was open to the Committee on the facts, particularly, having not been satisfied that the licensee knew, or should have known, that the property may have defective water supply and, if known, that the licensee withheld this information from the complainants.

[64] It is agreed by the parties that the licensee's conduct in question does not reach the threshold of misconduct and it is for us to determine whether that conduct (as described above) amounts to unsatisfactory conduct or whether the Committee was correct to take no further action.

[65] The Authority submits that the Committee's decision to take no further action was appropriate given the view it took as to the facts but that if we take a different view of the facts and find a breach of the Rules in this case, then a finding of unsatisfactory conduct should follow.

[66] In their notice of appeal, the complainants have indicated that they seek a new determination that will lead to an award of compensation and reparation to allow them to remedy the problems with the drinking water.

[67] It is noted that in *Quin v The Real Estate Agents Authority* [2012] NZHC 3557 the High Court (per Brewer J) held that committees cannot order licensees to pay complainants money as compensation for errors or omission (compensatory damages) under s.93(1)(f) of the Act. It is therefore submitted for the Authority that the complainants cannot seek compensatory damages as such. We accept that we are bound by *Quin*.

[68] As Mr Waymouth correctly emphasised, the simple issue before us is the nature of Mr Griffiths' conduct or actions as a salesperson in the marketing and sale of the property to the complainants. Our emphasis is on the licensee's alleged conduct rather than with whether the complainants may have any type of civil claim against the licensee or anyone else.

[69] Mr Waymouth submits that the issue before us can be put, in terms of the wording of Rule 6.5 (set out above), as to whether Mr Griffiths knew of defects to the property and did not disclose them; or whether, in terms of his knowledge and experience in the real estate market, it should have appeared likely that the property may have underlying defects which he should have disclosed.

[70] It is settled law that the onus of proof rests with the complainants and the standard of proof is the balance of probabilities.

[71] The focus of the case before us was whether there has been *"unsatisfactory conduct"* on the part of Mr Griffiths as defined in s.72 of the Act rather than the higher level of offending of whether there could be *"misconduct"* as defined in s.73 of the Act. Those two sections read as follows:

"72 Unsatisfactory conduct

For the purposes of this Act, a licensee is guilty of unsatisfactory conduct if the licensee carries out real estate agency work that—

(a) falls short of the standard that a reasonable member of the public is entitled to expect from a reasonably competent licensee; or

(b) contravenes a provision of this Act or of any regulations or rules made under this Act; or

(c) is incompetent or negligent; or

(d) would reasonably be regarded by agents of good standing as being unacceptable.

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."

[72] We record that all witnesses seemed credible to us but, more particularly, we assess Mr Griffiths as a truthful witness.

[73] We are conscious of the various allegations (covered above) made against Mr Griffiths by Mrs Frearson, in particular, and also that she considers he put pressure on Mr and Mrs Frearson to purchase the property and that he did all the talking with them about the state of the property. Of course, we understand the concern and distress to Mr and Mrs Frearson at finding they need to spend a further substantial sum of money to have a satisfactory water supply and quality at the property.

[74] The complainants have not proved that, at the time of listing and in the course of marketing the property up until its sale to them, there were issues about water flow and quality, or about the septic tank, which were known to Mr Griffiths (or any other of the said agents) or ought to have been known.

[75] Mr Griffiths happens to be quite experienced in knowing whether a water system has issues, and whether a septic tank system has issues, and he noticed no problems nor should he have, in our view.

[76] It seems very likely to us that the issues for the complainants arose because of the significant alterations they made, just prior to settlement and after it, to the water supply and, possibly, with consequences to the septic tank system. We note that Mr Frearson had advised the Committee, inter alia, that there had been no build up of iron or magnesium visible around the bottom of *"the shower, the taps and the like*. *The place was spotless"*. He then had continued:

> *"The water pressure was really low, and the hot water cylinder was nearing the end of its life so we took advice and installed a gas hot water system and a pump. The owners wouldn't let us connect the new pump or the gas hot water until we settled."*

[77] We cannot be satisfied that the vendors covered up any of the above issues nor even had them at material times and, similarly, Mr Griffiths does not seem to have been deficient in any respect.

[78] It seems to us that, insofar as Mr Griffiths made any representations to the complainants about the water supply or the septic tank system, he would have been merely acting as a conduit from the vendors but, overall, there does not seem to have been anything said which was misleading because any questions seem to have been directed at the flow of water rather than its quality, and as to whether the septic tank system was working satisfactorily which it seems to have been.

[79] The above issues are matters of fact rather than law. As we have indicated, all witnesses seemed sincere and honest but there is quite some confusion over what questions were asked and what answers were given. We have no reason to doubt the evidence of Mr Griffiths.

[80] As already indicated, we can understand how this case has caused stress to all, especially much upset, concern, and cost to the complainants who simply cannot drink the water at their home which is very murky currently. Nevertheless, the cause of the complainants' predicament cannot be sheeted home to Mr Griffiths on the balance of probabilities. We do not know what more Mr Griffiths could have done in all the circumstances.

[81] We do not think that the licensee has said, or not said, or inferred, or done anything which could have misled the complainants. He has not provided false information except in good faith as a conduit from the vendors. He withheld nothing. He simply did not know of any defects existing at material times so that he could not disclose them. We accept his evidence that, despite his knowledge and experience and awareness of signs of problems regarding rural water supply, and sewage systems, those were no signs of hidden or underlying defects at the property at material times. Accordingly, he had no obligation, or even suspicion to alert him to raise with the vendors or the complainants the issues which have evolved; or to suggest that the complainants seek expert advice as they have subsequently done.

[82] In terms of Mrs Frearson sincerely asking *"what are real estate agents for"?*; we observe that so long as they comply with the law, they should not be a target for disgruntled clients or customers. However, the latter are entitled to ventilate their issues before us having complained to the Authority.

[83] We agree with the approach of the Committee and confirm its findings. Accordingly, this appeal is dismissed and we order that there be no further action taken against Mr Griffiths in relation to these complaints.

[84] 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