

**BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

[2015] NZREADT 31

READT 085/14

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

**BETWEEN** **CHARLES BENEST**

Appellant

**AND** **REAL ESTATE AGENTS  
AUTHORITY (CAC303)**

First respondent

**AND** **ANDREW LAWRENCE**

Second respondent

**MEMBERS OF TRIBUNAL**

Ms K Davenport QC – Chairperson  
Mr G Denley – Member  
Ms N Dangen – Member

**HEARD** at AUCKLAND on 2 April 2015

**DATE OF DECISION** 28 April 2015

**APPEARANCES**

Mr C Benest, appellant in person  
Ms Lawson-Bradshaw for the first respondent  
Mr T Rea for the second respondent

**DECISION OF THE TRIBUNAL**

[1] This is an appeal from the decision of the Complaints Assessment Committee on 4 September 2014 to take no further action on Mr Benest's complaint. Mr Benest had engaged Mr Lawrence, the second respondent, to act on the sale of his house at 3 Awhiorangi Promenade, Swanson in October 2013. Mr and Mrs Benest listed their property with Barfoot's and hoped to have it sold before Christmas in order to facilitate the purchase of a new property in Snells Beach<sup>1</sup> and prior to Mr Benest having some surgery, which was initially scheduled for Christmas 2013.

---

<sup>1</sup> An agreement to purchase Snell's Beach was signed in late November/early December 2013.

[2] Mr Lawrence eventually negotiated a sale of the property in Swanson for Mr and Mrs Benest. However it took some time to negotiate the agreement. Mr Lawrence presented an offer to Mr and Mrs Benest in early December 2013 [on about 1 December]. Mr Benest complained about this offer. He said Mr Lawrence “badgered” him and his wife for a number of hours to get them to sign an agreement which was for less than Mr and Mrs Benest had wanted to receive for the property. However Mr Benest says that after much discussion and debate he agreed to the amount in the agreement if Barfoot & Thompson would reduce their commission by \$15,000. Mr Benest says that Mr Lawrence made a call to his manager and it was agreed that Mr Lawrence would reduce his commission by \$10,000 and Barfoot’s by \$5,000. As a result Mr and Mrs Benest agreed to sign the agreement for sale and purchase for \$830,000. However this agreement fell through after (Mr Benest says) a suggestion was made that the ride-on mower (and other equipment) be given to Mr Lawrence as part of this offer. Mr Benest declined to sign the agreement. Mr Benest believed that this initial offer was from the person who ultimately bought the property. The Tribunal have now seen a copy of this earlier offer and it appears it was from a different couple than the man who eventually bought the property. The ride-on mower appears to be included in this agreement<sup>2</sup>. Mr Lawrence denies that such a suggestion was made.

[3] Approximately two days later, i.e. on 3 December 2013, Mr Lawrence contacted Mr Benest again. Mr Benest says that he was told that the ‘purchaser was prepared to put down a deposit’ [meaning we understand a new purchaser had been found] and Mr Lawrence wanted to come and see him that night. Mr and Mrs Benest agreed to see him on 4 December. The agreement was signed for \$835,000. Mr Benest says that Mr Lawrence agreed that he would continue with the agreed reduction in commission. He said further that Mr Lawrence agreed to pay Mr Benest and his wife \$5,000 before Christmas and the other \$5,000 on or before 14 February and that there would be a reduction in commission from Barfoot & Thompson of \$5,000.

[4] The difficulty has been that Mr Lawrence says that he only ever agreed to a reduction in his commission of \$5,000 and that Barfoot & Thompson agreed to reduce their commission by \$5,000. Mr Benest says he agreed that if the first \$5,000 was paid before Christmas the further \$5,000 balance would not need to be paid, but if Mr Lawrence failed to pay \$5,000 before Christmas the full \$10,000 would be due on or before 14 February 2014. As Mr Benest sets out in his brief of evidence the situation was “*this was a very clear verbal agreement from Andy Lawrence, \$5,000 before Christmas 2013 and in a default situation \$10,000 on 14 February 2014*”. Mr Benest said that Mr Lawrence did not honour this agreement and pay before Christmas. On 14 February he only paid \$5,000 (not \$10,000) and he still owes \$5,000. Mr Benest says that unfortunately none of this was in writing and that he feels let down by Mr Lawrence who has now denied that the reduction was ever a reduction of \$10,000.

[5] Mr Lawrence agrees that he said he would reduce his commission and says he visited Mr and Mrs Benest prior to Christmas and they agreed that he could pay the \$5,000 on the date of settlement.

[6] The issues for the Tribunal therefore are:

---

<sup>2</sup> Mr Benest in an email to the Tribunal denies this was the agreement.

- (a) Was there an agreement that Mr Lawrence would reduce his commission by \$10,000 if he could not pay \$5,000 before Christmas 2013? And
- (b) Did Mr Lawrence “badger” Mr Benest to sign the initial agreement that was presented to him on or about 1 December 2013?

### **Discussion**

[7] The Tribunal acknowledge how stressful the sale of a property is. Further Mr Benest was facing the prospect of significant surgery prior to Christmas 2013. Mr Benest has also explained to the Tribunal that Mrs Benest suffers from a condition that means that she finds any stress difficult and hard to manage. Mr Benest presented his evidence to the Tribunal honestly and fairly. It is clear that he is of the view that Mr Lawrence lied to him and deceived him into signing the agreement on the basis that the reduction in commission would be \$15,000, which would make the lower purchase price more acceptable to Mr and Mrs Benest. The property had initially been listed for significantly more (\$885,000). By 1 December 2013 Mr and Mrs Benest had entered into an agreement to purchase their property at Snells Beach. The Tribunal have absolutely no doubt that Mr Benest is genuinely of the belief that this was the reduction in commission which was negotiated with Mr Lawrence. Unfortunately the evidence that Mr Benest gave was somewhat muddled as to the exact terms of the reduction in commission. Mr Benest also agreed that there was another meeting between Mr Lawrence and Mr and Mrs Benest on or about 18 December. However he was not clear about what terms were agreed, if any, at this meeting.

[8] In the absence of written documentation as to the reduction in commission it is difficult for the Tribunal to determine on the balance of probabilities (the required standard of proof) whether it is more likely than not that the agreed reduction by Mr Lawrence was \$10,000 or \$5,000. The commission that Barfoot & Thompson received on the sale was the sum of \$23,175. Mr Lawrence would have received a percentage of this commission which was unlikely to be more than half, i.e. no more than \$12,000. On the balance of probabilities it does seem unlikely that Mr Lawrence would have agreed to have given almost all of his commission to Mr and Mrs Benest. However such circumstances are not impossible and if there was further evidence we would have had no hesitation in making such a finding. However given the absence of a written agreement and the uncertainty over the 18 December 2013 meeting we cannot conclude that Mr Lawrence and Mr and Mrs Benest agreed to a \$10,000 reduction in Mr Lawrence’s commission. We therefore dismiss this part of the appeal as not established.

[9] Likewise while it certainly seems that whatever happened on the evening of 1 December significantly distressed Mr Benest he did not sign any agreement on that night. This means that it is difficult for the Tribunal to find that any pressure was applied to him which led him into signing an agreement which he subsequently regretted. All that can be said with certainty is that as a result of the interaction between Mr Benest and Mr Lawrence, Mr Benest declined to sign the agreement. This is not evidence of undue pressure. However it indicates that there was some disagreement between them or that Mr Benest was unhappy with the terms of the deal that he was offered. However as no agreement was signed we do not find any breach of the Act or the Rules by Mr Lawrence.

[10] Accordingly the Tribunal determine that Mr Benest has been unable to produce sufficient evidence to convince us that the appeal should be allowed and we dismiss the appeal.

[11] The Tribunal draws the parties' attention to s 116 of the Real Estate Agents Act 2008 and the appeal provisions contained in that section.

---

Ms K Davenport QC  
Chairperson

---

Mr G Denley  
Member

---

Ms N Dangen  
Member