BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2015] NZREADT 44

READT 090/14

IN THE MATTER OF	an appeal under s.111 of the Real Estate Agents Act 2008
BETWEEN	**CHRISTINE AND NEIL MURPHY**
	Appellants
AND	**REAL ESTATE AGENTS AUTHORITY (per CAC 301)**
	First respondent
AND	**VANESSA MOWLEM**
	Second respondent

MEMBERS OF TRIBUNAL

Judge P F Barber - Chairperson
Mr G Denley - Member
Ms N Dangen - Member

HEARD at AUCKLAND on 25 May 2015

DATE OF THIS DECISION 10 June 2015

APPEARANCES

The appellants on their own behalf
Ms N Copeland, counsel for the Authority
Messrs R Latton and J Bardsley, counsel for the second respondent licensee

DECISION OF THE TRIBUNAL

Introduction

[1] Were the complainant purchasers misled by the defendant licensee so as to believe that a residential property they sought to purchase was subject to another competing offer?

[2] Christine and Neil Murphy ("the complainants") appeal against the 26 September 2014 decision of Complaints Assessment Committee 301 to take no further action against Vanessa Mowlem ("the licensee"). The latter holds a salespersons licence and works for Bayleys Real Estate, St Helliers ("the agency").

Material Facts

[3] The Committee dealt with this matter on the basis that the material facts were as follows:

> *"2.1 The complainants purchased 4A Tarawera Terrace, St Helliers (the property) by a pre-auction offer made on 12 February 2011. The auction was set for 16 February 2011.*
>
> *2.2 Prior to this date the licensee had advised the complainants that another purchaser had the intention of making a pre-auction offer on the property. The licensee gave the complainants the opportunity to be involved in pre-auction bidding if this occurred and they agreed.*
>
> *2.3 Later in the day the licensee contacted the complainants and it was agreed that they would visit the licensee's office. The complainants have stated in their complaint that they were instructed by the licensee to make their highest offer, which they did. They have alleged that the licensee then advised them that she was going to meet the other purchaser to get their offer and present to the vendor.*
>
> *2.4 The complainants' offer was successful.*
>
> *2.5 The property was found to have watertightness issues and the complainants state it has cost $270,000 to have the property re-clad. It was during their review of the process of purchasing their property that they learned that theirs was the only offer".*

[4] As it was put to the Committee, the complainants believed they were misled by the licensee into believing that another party had put in, or was intending to, a pre-auction offer on the property so they were instructed by the licensee to put in their highest offer which was successful. However, about six months later they discovered that theirs was the only offer.

[5] The Committee gave the matter careful consideration, in terms of the evidence available to it, conducted a hearing on the papers in terms of the Act's procedure, and concluded that there is insufficient evidence to support the complaint against the licensee. It determined therefore to take no further action with regard to the complaint or any issue involved in it.

Issues

[6] The complainants purchased at 4A Tarawera Terrace, St Helliers by a pre-auction offer made on 12 February 2011. The auction was set for 16 February 2011. There is a dispute between the parties about precisely what was said by the licensee leading up to and at the time she secured a pre-auction offer from the complainants.

[7] The central issue is whether the licensee misled the complainants into thinking that another prospective purchaser either had, or was about to, submit an offer to purchase the property; so that they understood they were in a *"multi-offer"* situation, and felt pressure to put forward their best offer in advance of the auction rather than wait or start negotiations at a lower amount.

[8] Although there is evidence about the property being a leaky building, and that the complainants have been required to spend significant sums on repairs, this is not an issue before us. The appeal is focused on whether the licensee misled the complainants about there being another offeror.

Relevant Rules

[9] The Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009 apply on this appeal and rules 6.2, 6.4 and 9.2 are relevant and provide as follows:

> *"**6 Standards of professional conduct***
>
> *…*
>
> *6.2 A licensee must act in good faith and deal fairly with all parties engaged in a transaction.*
>
> *…*
>
> *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.*
>
> *…*
>
> ***9 Client care and dealings with customers***
>
> *General*
>
> *…*
>
> *9.2 A licensee must not engage in any conduct that would put a client, prospective client or customer under undue or unfair pressure."*

A Summary of Salient Evidence Adduced to Us

Evidence of Mrs Murphy (a Complainant)

[10] Mrs Murphy stated, inter alia, that she and her husband moved into the property on 28 April 2011 and nearly a year later it became evident that the house had serious watertightness issues. Those have been resolved with the vendors and are not part of the complaint. However, in the course of deciding what to do about those watertightness issues, the appellants had a meeting with Mr Tony Bayley of Bayleys Real Estate Ltd on 9 September 2013 and, by chance, learned that they had been the only party making a pre-auction offer for the property back on 12 February 2011. They were shocked and felt they had been grossly misled by the defendant and accordingly complained to the Authority.

[11] They state that they had understood from the licensee that, when they signed their offer to purchase the property on 12 February 2011, another offer was to hand; but they were given to understand by Mr Bayley that, as at 12 February 2011, there was no other offer even though as they left the licensee's office that day the licensee advised them that she was now going to see *"the other people"*. The point emphasised by Mrs Murphy is that, at that time when they had signed their offer, they believed another offer had already been made for the property through the licensee but, it had not.

[12] Mrs Murphy covered that there was a final open home for the property on 12 February 2011 and they were the last to leave it. She said that, as they walked down the drive of the property accompanied by the licensee, she told them that someone was going to make a pre-auction offer that day and asked whether they wished to be involved. They said they definitely did. Accordingly, the licensee said she would telephone them to arrange a meeting with them later in the afternoon and did so telephone them and arranged for them to attend her at her St Helliers office at 4.15 pm that day.

[13] Mrs Murphy said that they (she and her husband) attended that meeting with the understanding that they were going to be in a multiple offer situation and, at that meeting, the licensee asked them to make their very best offer for the property which they did. Mrs Murphy said that having done that and signed the forms presented to them by the licensee, Ms Mowlem (the licensee) said that she was then going to see the other person involved in the pre-auction offer situation. The appellants were surprised and confused about that as they thought that the other party had initiated a competing offer which the licensee would have then held. Mrs Murphy put it that, in any case, those words of the licensee *"consolidated our understanding that we were bidding against someone else in the pre-auction. As lay people we were completely unaware that at a pre-auction a multiple-purchaser agreement form should have presented to us and signed"*. No such pre-auction agreement form was involved.

[14] Inter alia, Mrs Murphy made it clear that the appellants were intending to attend the auction on the following Wednesday 16 February 2011 with no thought of making a pre-auction offer. However they felt induced to by the licensee saying another party would be making a pre-auction offer and leading them to believe that this other party had initiated a pre-auction process.

[15] Mrs Murphy emphasised that she and her husband are not seeking any form of compensation but are solely motivated by the desire to expose what they regard as unethical and unprofessional conduct by the licensee for the benefit of public dealing with her in future.

[16] Of course, Mrs Murphy was thoroughly cross-examined by both counsel. She insisted to Mr Latton that the licensee led them to believe another offer was being made and that on three occasions she told them there were other buyers. They were first told this at one of the open homes on 5 or 6 February 2011 on the basis that the others were interested parties. They were then told a few days later that one of the other interested parties would possibly be making an offer and they were then told on 12 February 2011 that an interested party was making an offer.

[17] The facts covered above were analysed in cross-examination of Mrs Murphy. It seems that the licensee did not actually tell the appellants she was holding another offer but they assumed that when called to the meeting at 4.15 pm on 12 February 2011 at which, as referred to above, they were told that they must make their very highest bid. They assumed that the other party had made an offer and at the conclusion of the meeting thought that the licensee was going to the other party to actually pick it up, because they had been told in the course of the day that another offer was *"going to be made"* and they were asked whether they wanted to bid.

[18] Inter alia in the cross-examination, it was put to Mrs Murphy by Mr Latton that the appellant had merely told Mr and Mrs Murphy that the licensee *"was hoping"* to go and get another offer. Mrs Murphy is adamant that the appellants were told that another offer was being made and they needed to sign an offer at their best price, and that the licensee then said she was going to see *"the other people"*. In fact there was no other person.

[19] It was also put to Mrs Murphy by Mr Latton that the licensee had not actually said she had another offer, just that the appellants should make their best offer; and that at the end of that meeting at 4.15 pm that day the licensee had merely said *"I'm going to see the other people regarding another offer"*. Mrs Murphy responded that the appellants had thought that the licensee had already obtained the other offer and they were surprised that the licensee was then going to see the other people at that point. Mrs Murphy emphasised that on at least one occasion the licensee had said to the appellants that there was another party which was going to make an offer.

The Evidence of Mr Murphy

[20] In general terms Mr Murphy's evidence-in-chief was similar to that from Mrs Murphy. He said that, fairly soon in the saga, the licensee told them that someone else was interested and then, after a few days, that person would be making an offer, and after the open home of 12 February 2011 they were told that the other party would be making an offer that day. He also confirmed that, on that day of 12 February 2011, they left the final open home for the property at about 12.45 pm and the licensee suggested they stay in the area rather than go home if they were interested in making an offer and she would contact them to call at her office. She did telephone them as contemplated and the said meeting at 4.15 pm that day took place. They understood that, within that time, the other offer had been made and they needed to bid against it.

[21] Inter alia under cross-examination from Mr Latton, Mr Murphy said that on 12 February 2011 the licensee told the appellants that another buyer was interested and would be making an offer that day and that she would contact them and give them the chance to bid also. He said the appellants went to that 4.15 pm meeting to make a pre-auction offer on the basis that there had already been another offer made for the property and, otherwise, they would have waited to bid at the auction. However, it seems that the appellants were not actually told by the licensee that another party had made an offer but they assumed it in the context of their various discussions up to that point with the licensee.

Other Witnesses

[22] A number of other witnesses of obvious integrity gave evidence for the appellants along the lines of communications they had had with one or other of the appellants consistent with some of the evidence adduced to us from the appellants. The evidence of those witnesses is, of course, semi-hearsay and, as it happens, we do not need to rely on it.

A Summary of the Evidence of the Licensee

[23] Ms Mowlem covered the above facts in a general way but, in terms of the issue before us, stated that on 12 February 2011 a further open home for the property was held which the appellants attended again. During the course of that, the licensee says she received a telephone call but she did not take it as she was conducting the open home. She says she was not aware of who made the call as the caller ID was blocked. She then continued:

> *"8 The caller left a detailed message. The caller made it clear they were interested in the property, and that it was "just what they were looking for". The caller stated that they were unable to make the open home as they were in*

Hamilton, and requested a viewing time. They also stated that if the viewing was satisfactory they would look to make a pre-auction offer.

9. My recollection is that I listened to the message after the open home whilst I was in my car. Unfortunately I was unable to return it, as it was from a blocked number."

[24] We observe that the brief of evidence filed for the licensee on about 17 April 2015 seems to be the first time that there has been reference to such a blocked telephone call or that any such explanation has been provided by the licensee.

[25] In her evidence-in-chief, the licensee continues that she telephoned the appellants that afternoon to let them know of that message and she relayed to them its contents. She seemed to be saying that message led the appellants to put in a pre-auction offer, that she did not pressure them to do so, and that she made a point of advising them that the offer from the third party may or may not eventuate. Both appellants deny that they were ever told of that telephone call.

[26] The licensee continued that she agreed to meet with the appellants later that afternoon of 12 February 2011 but still had heard nothing further from the telephone caller so that she judged it unnecessary for the appellants to fill out a multi-offer form because the caller had not made an offer.

[27] She said the appellants were very excited about the property and keen to proceed so she advised them to make their offer as high as they would have bid for the property. She had in mind that if the vendor was to be persuaded not to take the property to auction and, to accept a pre-auction offer, it needed to be as high as possible. That is what happened.

[28] The licensee said she told the Murphys that she would take their offer to the vendors that afternoon and would telephone them to inform them of the outcome. She insists that she did not state she would be contacting the *"other purchasers"* because, on the one hand, the telephone caller (with the blocked message) was not a purchaser and had not made an offer and, on the other hand, she did not have the ability to telephone back that person because the telephone call was blocked in terms of the caller's identity. The licensee did not know who the caller was and did not have his, her, or their telephone number which had also been blocked.

[29] Inter alia, the licensee says that she was unaware of the leaky building issues which came to light at the property.

[30] The licensee was thoroughly cross-examined; although much of the cross-examination is rather peripheral to the issue before us.

[31] The licensee admitted that she had not recorded the contents of the blocked telephone call at the time and said that she receives many blocked calls and does not record them and so had no way of contacting the caller. She did not seem able to explain why the blocked call aspect had only been raised for the first time recently, i.e. about four years after material events. She insisted that she had not invented that story about the blocked telephone call.

[32] The licensee acknowledged that, at material times, there was no other person interested in purchasing the property whom the licensee needed to contact and inform about progress.

[33] It was put by Mrs Murphy to the licensee as to why she had advised the appellants that day of 12 February 2011, at the end of the open home, that another offer was coming to hand. The licensee firmly denies that she ever said that to either appellant. She also strongly asserts that she did receive the said blocked call, seemingly, from interested people in Hamilton. The licensee also asserts that she did not ask the appellants to stay around the area after the open home of 12 February 2011 on the basis that another offer was coming for the property.

[34] To Ms Copeland, the licensee insisted that she had not told the appellants that another person was interested in the property and she never said that another offer was coming.

[35] She said that she did say to them that day, apparently at the end of the open home after receiving the blocked telephone call, that there was someone who wanted to view the property on the basis that, if it was satisfactory to them, they might possibly make an offer to purchase the property. She also seemed to be saying that the appellants made the arrangement to attend her office at 4.15 pm that day after she would have told them about the blocked telephone call. She added that, if she had another offer to hand, she would have asked the appellants to sign a multi-offer form and that there was *"no way I told them there was another offer"* and that issue was not raised by them when they attended her at 4.15 pm that day.

[36] The licensee opined that the appellants *"must have assumed I had another offer but I didn't and wouldn't say there was another offer as I didn't have it to hand"*. The licensee was pressed by Ms Copeland that she had told the appellants she was going to get the other offer. She responded *"not so I didn't say and I couldn't as the caller's number was blocked"*.

The Evidence of Mr M A S Bayley

[37] Mr Bayley is the licence holder for the agency and also its compliance manager. His helpful evidence related more to the background of the property being a leaky home and the resolution of the appellants' claim about that.

[38] Inter alia, he observed that the appellants seemed convinced, when he met them on 23 August 2013 at his office, that the licensee had sold them the property before auction date because the licensee knew that the property was not watertight.

[39] He said that they told him that, at that meeting after the open home of 12 December 2011, the licensee had told the appellants she was *"off to meet another purchaser"*. Accordingly, he checked the agency's file and noted there was no multiple offer form and said he would look into it for the appellants. He met with them for a second time on 9 September 2013 and confirmed to them that they were the only party to make an offer to purchase the property and he noted they were stunned to hear that. He then continued his evidence-in-chief as follows:

> *"10 However, after some discussion, the Murphys confirmed that Ms Mowlem had informed them she was hoping to get another offer but that that other offer was not yet to hand at the time the Murphys signed their offer.*

[40] Before us he seemed to add that he had asked the licensee at that time why there had not been a multiple offer form signed and the licensee told him *"she expected and hoped for a second offer but it did not eventuate"*.

The Stance of the Authority

[41] Ms Copeland notes that the issues are primarily factual. She puts it that, if we accept the complainants' version of events, then the licensee has misled them into believing that another offer had been made, or would be forthcoming, such that they needed to make their very best offer without delay to ensure that they could secure the property.

[42] Ms Copeland notes that there would not have been the same pressing need for them to make a pre-auction offer had they understood that another person had expressed some interest but nothing more concrete than that.

[43] We accept that creating a sense of urgency and competition is highly desirable in bringing about the best price for a vendor; but it would be contrary to a licensee's legal and ethical obligations to mislead a prospective purchaser into believing that is the case when it is not.

[44] As Ms Copeland observed, where this occurs, rules 6.2 and 6.4 are likely to apply most directly; but that we might also find that undue pressure has been applied as a result of the misleading behaviour, in which case rule 9.2 is also relevant.

[45] Ms Copeland noted that the issues for us are factual and come down to our assessment of credibility. She notes that the licensee denies misleading the complainants at all and it is this factual dispute we must resolve.

[46] Ms Copeland submits that, if we prefer the licensee's evidence, the Committee's decision is correct and no further action should be taken.

[47] Ms Copeland also observed that, if we accept the evidence of the appellants then the licensee has misled them into making their best offer; but that if they had merely understood that another person might make an offer, that is not so. She also noted that the licensee strongly denies misleading the appellants.

The Stance of the Appellants

[48] Mr and Mrs Murphy simply put it that, prior to the auction the licensee (they allege) misled them into believing that another party was about to put in a pre-auction offer and induced them to make their said offer. That happened later that day of 12 February 2011 when they attended the licensee's office at 4.15 pm and the licensee encouraged them to put in their highest offer. They believed they were in a competitive offer situation and so did that.

[49] They say that the licensee then told them that she was going to see *"the other party"* which surprised and slightly confused them because (they say) until that point the licensee had led them to believe, and they had assumed, that the other party had already put in *"their"* offer.

[50] The appellants consider that they have been deceived and misled by the licensee.

[51] At this point, the appellants accept that it is the licensee's word against theirs. Inter alia, they put it that the licensee must have realised the weathertightness problem of the property, and the stigma relating to previous repairs about that which have since been revealed, and felt she needed to pressurise the appellants because they were keenly interested in the property. They assert that do not wish anyone else to be misled by the licensee like they were .

The Stance of the Licensee

[52] We have the benefit of detailed typed submissions from Mr Latton and further thoughtful oral submissions from him also. Naturally, he refers to the conflict in evidence between the appellants and the licensee and analyses that evidence. A particularly relevant part of his submissions read as follows:

> *"3.14 Ms Mowlem says that, during the course of the 12 February 2011 open home, she received a telephone call. She was conducting the open home at the time, and so could not take the call. The call was from a blocked number. The caller left a detailed message saying that they were interested in the Property and that it was just what they were looking for. The caller said that they were coming up from Hamilton, could not make the open home, but would like to arrange another time to inspect the Property. The caller also said that if the Property was satisfactory they would look to make a pre-auction offer.*
>
> *3.15 Ms Mowlem's evidence is that she did not pick up this message until after the open home. Because the call was from a blocked number, she was unable to return it. Her recollection is that she was in her car when she listened to the message.*
>
> *3.16 In line with their instructions, Ms Mowlem telephoned the Murphys to let them know of the call, and what the caller had said in the message. Her recollection is that the Murphys said that they did not want to miss out on the Property, and would like to place a pre-auction offer. Ms Mowlem specifically recalls telling the Murphys that an offer by the caller may or may not happen. However, the Murphys wanted to continue.*
>
> *3.17 Ms Mowlem met with the Murphys at Bayleys' St Helliers office later in the afternoon of 12 February 2011. She says that, at this point, she still had not heard further from the caller. For that reason, she did not have the Murphys fill out a multiple offer form.*
>
> *3.18 Ms Mowlem says that she advised the Murphys to make their pre-auction offer as high as they would have bid for the Property. Ms Mowlem also informed the Murphys that she would take their offer to the vendor, and that she would telephone them later to let them know the outcome.*
>
> *3.19 Following her meeting with the Murphys, she presented their offer to the vendors. They accepted the offer. Ms Mowlem then called the Murphys. She specifically recalls them saying that they were delighted, and were going out to dinner to celebrate.*
>
> *3.20 During their meeting on 9 September 2013, the Murphys said to Tony Bayley that Ms Mowlem had told them that she was hoping to get another offer. However, they also said she told them that it was not to hand when they signed their offer for the Property. Tony Bayley recorded this position in his meeting notes."*

[53] Inter alia, Mr Latton submits that the key issue is whether the licensee advised the appellants that the other interested party was intending to make an offer or had made an offer or, merely, that the other party was interested which is what the licensee maintains. We agree that this appeal comes down to that key issue in terms of credibility.

[54] Mr Latton submits that the licensee did not place undue pressure on the appellants and that is clear from their evidence and that they were merely told they could make an offer and not that they should. He submitted that it is not placing undue pressure on the appellants to encourage them to *"put in their highest offer"*. He notes that the licensee does not deny telling them that their offer needed to be competitive and she says that she *"advised them to make their offer as high as they would have bid for the property"*. He submits that the licensee was merely trying to ensure that the appellants had the best chance possible to purchase the property in which they were highly interested.

[55] Mr Latton puts it that the appellants are mistaken when they say that the licensee, upon their leaving the meeting at her office at about 4.15 pm on 12 February 2011, said she was going to contact the other purchaser because there was no other purchaser and, in terms of the blocked message, the licensee was unable to telephone back that caller as the telephone number was blocked.

[56] Mr Latton puts it that the appellants maintain that the licensee misled them into believing that another party was about to put in a pre-auction offer and they do not say that the licensee told them that the other party had put in an offer. He refers to the appellants having acknowledged that they *"assumed"* that the other party had already put in an offer. He submits that the licensee never told them that another offer had been received but only that a third party had indicated interest in the property

[57] In his final oral submissions, Mr Latton accepts that the issue before us is simply one of credibility and the question is: did the licensee tell the appellants that there was another offer which had been made or was about to be made or, instead, did she simply tell them that another party was interested and might make an offer?

[58] Mr Latton accepted that there is quite a conflict between the evidence of the appellants and the response of the licensee. He emphasised that the latter simply said to them after the meeting of 12 February 2011 at about 4.15 pm that she was going to see the other party but she did not say she was going to get another offer; and that the appellants assumed she was going to uplift the other offer.

[59] Mr Latton puts it that, even if the appellants are correct in what they say, there is no evidence that the licensee said she was going to pick up another specific and definite offer and that they had only been told there was another party who might be interested in making a pre-auction offer.

[60] We observe that it seems rather misleading that the appellant said she was going to see the other party when she knew that she was unable to contact the other party, did not know who the other party was, nor what was the extent of their interest.

[61] Mr Latton puts it that there is a background in this case of unsubstantiated allegations and that, on the balance of probabilities, it is not proved that the licensee knowingly misled Mr and Mrs Murphy and the onus is on them to that standard.

Our Views

[62] From our experience at endeavouring to assess the truthfulness of witnesses, we much prefer the evidence of the appellants and we find the responses, denials, and explanations of the licensee quite unconvincing.

[63] The evidence can be assessed as that the complainants were not told by the licensee that another party had actually made an offer. Mr Bayley thought that the

complainants had told him they understand that another offer was expected and hoped for. There could be some confusion in the precise recollection of witnesses at this stage with the passage of time. At the very least, the complainants were told there was another party intending to bid when there was no such party. The so-called blocked telephone call could not, in commercial reality, be construed as another likely prospective party. In any case, we do not find that blocked telephone call story from the licensee to be credible in all the circumstances.

[64] One wonders why the complainants did not withdraw their offer at the end of the 4.15 pm meeting with the licensee of 12 February 2011 when the licensee said she was going to see the other person involved in a pre-auction bid situation. We can accept they deduced that the licensee simply had to go to that other party and uplift or, maybe, draw up the other offer. However, there was no other party. We consider that was dishonest on the part of the licensee.

[65] Overall, we find that the licensee rather cleverly built up a very strong assumption by the complainants that they had a pre-auction bidding rival when they did not. That must be dishonest, and a breach of rules 6.2, 6.4 and, due to the way they were manipulated, be a breach of the said rule 9.2. It must also be a breach of rule 6.3 which reads: *"6.3 A licensee must not engage in any conduct likely to bring the industry into disrepute."*

[66] We accept that a desirable selling technique for a salesperson is to have prospective purchasers feel that they must quickly make their best offer as others are interested and likely to do that. However, in this case we find that the appellants were led to believe another offer had been made or was being made, and that concept was quite cleverly developed by the licensee, and that was dishonest on the part of the licensee because there was no other verifiable interest.

[67] Section 72 of the Act reads:

> ***"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."*

[68] The licensee's conduct is a breach of a salesperson's obligation to act in good faith and deal fairly with all parties in terms of rule 6.2; is misleading in terms of rule 6.4; and put undue or unfair pressure on the appellants in terms of rule 9.2. Accordingly there has been *"unsatisfactory conduct"* as defined in s 72(b) of the Act because there has been contravention of the Rules. There is also unsatisfactory conduct in terms of ss.(a) and (d) of s.72.

[69] We are all very satisfied that the appellants are truthful and that they have proved their allegations on the balance of probabilities.

[70] Very simply put, it has been suggested that the licensee is in the clear, in terms of the Act, because she did not say to the complainants that another offer existed. It seems to us

that she contrived that the appellants think that, and the licensee understood them to believe that to be so.

[71] In any case, the licensee at least told the appellants there was another very interested party, when there was no such party, and that the party was going to make a pre-auction offer when that was not so. That was a lie.

[72] It follows that we must quash the decision of the Committee to take no further action and record that we find the licensee guilty of unsatisfactory conduct. Far more evidence was adduced to us than was before the Committee.

[73] In the usual way we direct the Registrar to arrange a Directions Hearing with our chairman by telephone with the parties to discuss a procedure towards a penalty hearing, or for dealing with penalty by consent on the papers.

[74] 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 G Denley
Member

_____

Ms N Dangen
Member