

**BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

[2015] NZREADT 47

READT 040/14

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

**BETWEEN** **HUI JUAN YAN**

Appellant/Complainant

**AND** **REAL ESTATE AGENTS  
AUTHORITY (per CAC 306)**

First respondent

**AND** **JINCAI (TONY) CHANG**

Second respondent/Licensee

**MEMBERS OF TRIBUNAL**

Judge P F Barber - Chairperson  
Ms N Dangen - Member  
Ms C Sandelin - Member

**HEARD** at AUCKLAND on 13 November 2014 and 15 May 2015

**DATE OF THIS DECISION** 22 June 2015

**APPEARANCES**

The appellant on her own behalf  
Ms S M Earl for the Authority  
Mr T D Rea for the second respondent licensee  
Mr Albert Deng as Mandarin interpreter

**DECISION OF THE TRIBUNAL**

***Introduction***

[1] Did the licensee take over bidding for apartment 1, 66 Monteith Crescent, Remuera, Auckland, and buy it for the appellant complainant against her will because she did not want to pay the auction price?

[2] Hui Juan Yan (“the appellant”) appeals against the decision of Complaints Assessment Committee 306 to take no further action with regard to her complaint against Jincai (Tony) Chang (“the licensee”) and alleges:

[a] That the licensee took control of the appellant’s bidding at the auction of the said property, acted against her wishes, and ignored her directions

resulting in the appellant purchasing the property at a higher price than she was prepared to pay;

- [b] That the actions of the licensee meant she had to borrow more money than she intended to;
- [c] That the licensee failed to return to the appellant a deposit cheque which had been used to present pre-auction offers on the property, which were rejected by the vendor.

[3] The Committee found that the complaint had not been proved on the balance of probabilities.

### ***The Background***

[4] About three weeks before its auction date of 11 September 2013, the licensee introduced the appellant to the property. On 30 August 2013 the appellant made a pre-auction offer for \$470,000, which was rejected by the vendor.

[5] On 5 September 2013, the appellant made a further pre-auction offer of \$491,000, which was again rejected by the vendor.

[6] Each pre-auction offer was accompanied by a bank cheque of \$46,000.

[7] On 11 September 2013, the appellant and licensee attended the auction. The licensee conducted the bidding for the appellant. The auction reached a point where the appellant (through the licensee) had made a bid for \$530,000 and the other individual bidding on the property had ceased bidding. The auction was paused to allow discussion with the licensee and the appellant. Through the licensee, the appellant then made an offer of \$535,000 which was declined by the vendor. Similarly, the appellant made a further bid of \$540,000, and the auctioneer declared the property to be on the market. There were no further bids and the appellant purchased the property.

### ***The Committee's Decision of 4 March 2014***

[8] The Committee referred to the appellant's evidence that she had a maximum budget of \$500,000 to purchase a property (\$400,000 cash and \$100,000 mortgage funding) and her submission that, by bidding on the property at the level of \$540,000, the licensee failed to give her the opportunity to negotiate with the vendor to obtain the property at a lower price.

[9] The Committee referred to available video footage of the auction and commented that it showed the licensee and the appellant sitting together and talking from time to time during the course of the auction. The Committee stated that, if the appellant was unhappy with the actions of the licensee, or that if he was failing to follow her instructions, it was not apparent from the video. The Committee also commented that it was clearly within the appellant's ability to give instructions to the licensee to stop bidding, or if the licensee failed or refused to do so, she could have simply left the room, neither of which appeared to have occurred.

[10] The Committee found that the appellant had not established to the necessary standard that the licensee failed to follow her instructions or that he, in some way, put undue or unfair pressure on her.

[11] With regard to the appellant's allegation about the non-return of the deposit cheque (until the purchase at auction), the Committee preferred the evidence of the licensee to the effect that he retained the cheque until the date of the auction on the directions of the appellant.

### ***Basis of the Appeal***

[12] A large amount of typewritten material has been provided by the appellant who alleges that the licensee acted contrary to her instructions in conducting her bidding, and that she wanted to stop bidding and negotiate with the vendors after the auction in order to purchase the property at a lower price.

[13] There is the aspect that the appellant contends the licensee knew that she suffered from depression. She states that this is relevant to her behaviour at the auction and that the licensee, being aware of her condition, took advantage of her.

[14] Other aspects of the appeal include the alleged failure by the licensee to return the deposit cheque; that he failed to provide documentation in advance of the auction (including the auction documents); and that she was misled into making two pre-auction offers. However, before us the appellant's focus was confined to the bidding and deposit cheque issues.

### ***Salient Evidence Adduced to Us***

#### *Evidence of the Appellant Complainant*

[15] Ms Yan, helpfully, filed many memoranda prior to the fixture which we have accepted as comprising an overall brief of her evidence-in-chief.

[16] From some real estate source, since her purchase of (the apartment), the complainant has become convinced that its proper value was about \$400,000; so she takes the view that the licensee has cheated her into paying \$540,000 for it.

[17] Essentially, she maintains that he completely took control of bidding for her at the auction and, although they had a strategy between them that they would not bid until someone else did and that the focus for the complainant endeavouring to purchase the property would be on subsequent negotiations with the vendor rather than by bidding, she alleges that the licensee ignored that plan and wanted to favour the vendor by getting a top price. All the complainant's concerns are covered in cross-examination of her to which we refer below, but one of her many concerns is that there was a third party bid at \$510,000 but the licensee on her behalf then made a bid of \$20,000 to \$530,000 at which point the auctioneer put the process on hold until he conferred then with the owner and then with the complainant and the licensee. She asks why would the licensee have suddenly bid \$20,000 on my behalf?

[18] She also expressed her concern that, after they had spoken with the auctioneer who had emphasised that the owner's reserve was \$540,000, she was pressured by

the licensee into making a further offer so that she said “yes, *but only a small amount of money, give them*”. She says she meant a sum such as \$1,000. However, the licensee immediately increased her offer by \$5,000 and, when that was rejected, by a further \$5,000 enabling her to purchase the property at \$540,000.

[19] She also alleges that he did not tell her that she could refuse (so it was said) to sign the purchase documents after the auction and he did not give her the chance to read those. She asserts that there was a real estate price indication of some type at \$400,000 and that the fair price for the property was below \$500,000.

[20] On the first day of the hearing, 13 November 2014, Ms Yan confirmed that evidence and made herself available for cross-examination. As it transpired, at the end of her cross-examination she explained that she suffers an ongoing mental illness, had overlooked taking her medication that day, and was not well enough to continue with the case which would have particularly involved her then cross-examining the licensee who is well known to her.

[21] That is why the proceedings were then adjourned and did not resume until 15 May 2015.

[22] Also on that first day of hearing, by consent, we viewed videos which happened to have been taken of the auction in issue. Although there was no main sound attached, suffice to say that the video seemed quite inconsistent with the auction procedure and the attitude of Ms Yan and Mr Chang as described by her, but quite consistent with proceedings as described to us by Mr Chang. The tape also showed that, at crucial times, Ms Yan was able to consult with and give instructions to Mr Chang and appeared to do so and that her ultimate commitment to purchase the property did not seem to be made under pressure but seemed well considered.

[23] In the course of cross-examination by Mr Rea, it was covered that the complainant had endeavoured to purchase the property pre-auction for \$473,000 and had provided a cheque for \$47,000 as a deposit to support such an offer. She seemed to be saying that, when that offer was not accepted, she required back the cheque but Mr Chang would not return it to her so (she said) that she had to buy a property through him. She does not accept his explanation that she told him to retain the cheque because she intended to buy the property and the cheque would be applied to the ultimate price.

[24] The process at the auction was analysed in great detail step by step at various times in the hearing before us but, simply put, the bidding seemed to quickly move from about \$470,000 to \$510,000 and falter at \$530,000 which was arrived at by a \$20,000 bid from Mr Chang. That was below the vendor’s reserve of \$540,000. Essentially, Ms Yan is saying that she did not instruct nor want Mr Chang to pay more than \$530,000 but the auctioneer came down to them, showed them his instructions about the reserve price from the vendors, and asked both Ms Yan and Mr Chang together if Ms Yan wished to make a higher offer than \$530,000. She said to us that she told Mr Chang that she would go to that price “*plus a little bit more*” but, without her authority (she alleges), he then offered the auctioneer a further \$5,000. It seems that the bidding resumed and quickly went to \$535,000 and it seemed that the property would be taken off the market but Mr Chang then bid \$540,000 and purchased the property. Ms Yan insists she did not authorise him to do that.

[25] She said that she immediately “*denounced*” his conduct to him as depriving her of the right to negotiate with the vendor. She adds that she did not know she could have refused to sign the purchase document and that the licensee pressed her to sign it.

[26] Ms Yan insists that from that point she was thoroughly concerned, worried, and unhappy about the situation. She denies that she was ecstatically pleased and almost immediately went to the vendor to discuss purchasing his furniture at the property (but he declined to sell her any furniture). She denies that she signed the contract readily and then had Mr Chang drive her to the property as a very happy experience in which she checked it out, and expressed pleasure about its bus route and various aspect that were pleasing to her in terms of her culture, and that at no stage did she object or complain but expressed the greatest happiness that Mr Chang had purchased the property for her at \$540,000.

[27] There is no dispute that she had at least \$400,000 of that price available in cash. It was put to her that, for some unknown reason, about a week later she became very concerned about the purchase because, somehow or another, it had been suggested to her that its true value was more in the region of \$460,000. She responds that she was never happy and excited about the purchase and, indeed, had raised the issue of furniture with the vendor because she sought to buy furniture from him cheap to compensate for what she regarded as a big overpayment on price at the auction.

[28] She said she would never have authorised Mr Chang to pay more than \$460,000 because she did not want to borrow money to complete the purchase.

[29] To Ms Earl, Ms Yang said, inter alia, that Mr Chang had kept reiterating to her that the property was worth \$560,000 but she responded that she did not wish to borrow money and Mr Chang said he would help her at the auction and she should listen to him. It seems she agreed to let Mr Chang bid at the auction but there was no bidding limit fixed. According to Ms Yan they did not discuss auction tactics. She also insisted that at no stage did Mr Chang advise her to obtain legal advice.

[30] As indicated above, Ms Yan advises that she suffers from a difficult chronic mental illness and that is quite perceptible. To us it still seemed to be a problem for her when we resumed the hearing on 15 May 2015.

### ***The Evidence of Ms Fong Wang***

[31] Ms Wang is a business woman who is a close friend of the complainant. She said that the complainant had asked her to find a property for her to buy so she introduced the complainant to the licensee asking him to search for such a property for the complainant. They fairly soon took an interest in the said apartment and the three of them i.e. the complainant, the licensee and Ms Wang, agreed “*that if no one bids during the auction, we won’t bid either, we can negotiate with vendor after the auction*”.

[32] Ms Wang then continued her evidence-in-chief as follows:

*“Right after the auction took place, Hui Juan Yan phoned and told me that she was very sad and that Tony forced her to buy the property and she told me that no one was bidding and Tony was bidding against himself without her. I asked*

*Hui why she didn't tell the auctioneer to reject Tony's bids, Hui answered that she didn't know that she could do that. I further asked why she didn't refuse to sign the contract, Hui answered that she didn't know she could do that either. Hui Juan Yan told me that Tony did not give her the time and opportunity to understand the contract before requesting me to sign. I told Hui that she should have understood the contract and policies of the auction before the auction, Hui told me that Tony never gave her any policies and information about the auction before the auction, she said Tony did not give her anything before the auction."*

[33] In cross-examination by Mr Rea, Ms Wang said that she had not attended the auction herself but that the complainant telephoned her a few hours later and advised her of events at the auction at some length. Ms Wang said that she asked the complainant if she had understood what she had been doing and the complainant responded "*I don't know*".

[34] Ms Earl put it to Ms Wang that she and the complainant and the licensee had agreed that if no one bids then the complainant would not so that she could negotiate and asked her when that understanding came about. Ms Wang advised that it was some time before the auction and, probably, before the complainant made pre-auction offers but she could not be sure.

[35] Ms Wang seemed vague about the price the complainant hoped to buy the property for, but thought it would be over \$490,000 but did not seem to recall the actual price paid by the complainant. She also responded to Ms Earl that after she made an affidavit to support the complainant in these proceedings, she received a telephone call from the licensee and they had a brief conversation in which he suggested to her that some of the things she had stated were incorrect.

### ***The Evidence of Mr Chang (The Licensee)***

[36] Salient evidence from the licensee is covered in our summary of his cross-examination below. However, in various pre-hearing briefs he states that he now realises that the complainant has changed her mind about her purchase in respect of which she was originally very pleased and but she now believes she paid too much for the property.

[37] He said that he followed all proper procedures and gave her the appropriate booklet from the Real Estate Agents Authority and the Barfoot & Thompson document explaining its in-house complaint process and all documents related to the auction, including the particulars and conditions of sale and the Code of Conduct required to be provided to purchasers in terms of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009.

[38] He said that he did telephone Ms Wang after he read her affidavit to us and pointed out to her that a few of her statements were untrue in his view. He suggested to her that she should be impartial but says he did not in any way "*condemn or threaten*" her as has been alleged. He said that conversation took 10 minutes at the most and not the "*over one hour*" suggestion of the complainant. He asserts that at all stages he did everything "*a rule abiding agent would have done*" and focused on assisting the complainant over a period of three weeks prior to the auction.

[39] He said that prior to the auction both he and the appellant thought her chances of *“winning the bid”* were very slim, but they discussed standard strategies and the desirability of holding the last bid when the property is passed in so as to gain the exclusive right to negotiate with the vendor. He noted that they were surprised that there was only one other serious bidder at the auction being *“a kiwi couple”* but they gave up, he said, when the complainant raised the bid from \$510,000 to \$530,000 so that she remained the only bidder.

[40] He said that was why the auctioneer came and spoke to them and showed them that the vendor’s reserve was \$540,000. The licensee said that she then counter offered \$535,000 which offer the auctioneer took to the vendor but then came back saying the vendor insisted on \$540,000. The licensee said that the complainant so liked the apartment that she accepted the price of \$540,000. He said the auctioneer declared then that the property was back on the market and called three times and there were no better offers so the complainant won the bid. He said that that price was *“way below her expectation and I could see that she was very happy”*.

[41] He asserted that he never tried to control her or bid without her consent but merely gave advice to her. In various memoranda the licensee has, in some detail, responded to and rejected all the allegations from the complainant as being untrue. Indeed, he concluded a typed statement he signed on 25 November 2013 by saying that the complainant herself chose the unit, happily went to the auction, made the bid, agreed to increase the bid and, with the help of the auctioneer, won the bid well under her budget. He said that he, the licensee, *“had not forced, misled, or done anything at any circumstance interfering with her decision”*. He then also added *“her demand of asking me to pay her back what she imaged market price difference is unjustified and I flatly reject it”*.

[42] Before us Mr Chang responded to Mr Rea that, although he had known that Ms Yan had been ill in the past, she seemed absolutely normal to him at all stages of the purchase of the apartment and that included the three weeks previously in which he showed her that apartment and a number of other properties. He said that before the auction, and at it, Ms Yan was very excited and happy.

[43] Mr Chang said that he did not take control of the bidding at the auction without her instructions but that, at every step, she instructed him what to do and he did only as she had wanted. He covered that she seems to understand English quite well but sometimes prefers to speak Mandarin. We observed that before us, although she relied on Mr Albert Deng a Mandarin interpreter of repute in Auckland, she appeared to understand English well.

[44] Mr Chang insisted that Ms Yan was jubilant to purchase the property at the auction for \$540,000 and very happily signed the auction contract, and endeavoured to buy furniture from the vendor who responded that none of it was for sale. She then went with Mr Chang for a final inspection of the property and, he said, she carried that out minutely and very happily and she was congratulating Mr Chang on obtaining the property for her on the basis which he did.

[45] Mr Chang was carefully cross-examined by Ms Yan although, as we have said above, she did not seem a well person to us. That cross-examination proceeded through Mr Deng the interpreter.

[46] Mr Chang emphasised that, until about a week before the auction, he felt that Ms Yan could not afford to pay more than \$460,000 for the property but she insisted that she could and told him she had \$400,000 in cash plus the ability to raise \$80,000 or more easily from her bank. He insisted that, at the auction, Ms Yan decided that \$540,000 was to be bid for her and she instructed him accordingly. This was after the bidding had stopped at \$530,000 and the auctioneer had come to them and showed them the reserve of \$540,000 document from the vendor. He said she authorised him (Mr Chang) to offer \$530,000 and, when that did not achieve the purchase because the vendor would not accept it, she insisted to Mr Chang that he bid for her up to \$540,000 which he did.

[47] To Ms Earl, Mr Chang said, inter alia, that he felt the property was worth in the mid \$550,000 range and that \$540,000 was a good purchase price from Ms Yan's point of view. He also said to Ms Earl that he was conscious that Ms Yan was reluctant to have to borrow from her bank.

[48] He said that prior to the auction he explained various bidding strategy options to Ms Yan and they had many talks about tactics they might employ later at the auction. He said they did not discuss a maximum price because he did not then know what she was able to afford and how she felt as to price, although he felt she could not possibly offer over \$600,000. He said that she seemed to be fully aware of strategies and had her own strong opinions so that he felt they should simply attend the auction and see how the process went.

[49] Mr Chang said that during the auction he had said to her that if she did not bid at all she would have no right to negotiate if the property was passed in, and she responded "*then bid*". He would look at her as the bidding proceeded and she would say "*yes*" so that he would raise his hand on her behalf for a bid. He said that after each bid she would tell him to bid more and, as already covered, the auction stopped at \$530,000 for the auctioneer and vendor to take stock of the position. Mr Chang asserted firmly that, when the auctioneer had shown them the reserve price document of \$540,000, the appellant told him to offer \$535,000 and she did not say to him "*just add a little bit*". Mr Chang stated that when \$535,000 was rejected by the vendor, Ms Yan firmly told him to offer \$540,000. That did not surprise him because he knew she very much wanted to buy the property which she had carefully viewed at least three times he said. Also he considers that she was not overpaying.

[50] With regard to the deposit cheque, Mr Chang asserts that Ms Yan told him she was not concerned about obtaining it back from him when the initial pre-auction offer was declined, because she observed that auction day was only a few days away and it could be used then.

[51] Mr Chang observed that, having spent most of the preceding three weeks prior to the auction with Ms Yan, he felt he had got to know her and heard from her all about her life and her family. He felt she was in absolutely normal health and a very happy person at all material times.

### ***Nigel Dean's Evidence for the Licensee***

[52] Mr Nigel Dean, a very experienced valuer with Colliers International, having over 43 years' experience as a registered valuer, was instructed in late August 2014 on behalf of Mr Chang to provide a valuation of the property as at the date of



purchase by Ms Yan (11 September 2013), and a further valuation as at 4 September 2014.

[53] When instructing Mr Dean, no indication was given to him of the purpose of the valuation (other than that it was to be used in evidence) or the outcome that was hoped to be achieved.

[54] As at the date of purchase by Ms Yan on 11 September 2013, Mr Dean places the value of the property in a range between \$530,000 and \$560,000, with an assessed value of \$545,000. In other words, it is put that the price paid by Ms Yan of \$540,000 (being \$5,000 less than the assessed value) represented good value for the property.

[55] Mr Dean places the value of the property as at the date of his valuation of 4 September 2014 in a range between \$560,000 and \$600,000, with an assessed value of \$580,000. In other words, on Mr Dean's evidence, Ms Yan made a paper capital gain on the property, above her purchase price, in the order of \$40,000 in one year of ownership.

### ***Submissions for the Authority***

[56] Ms Earl submits that the focus of the appeal must be on the conduct of the licensee at the auction and any discussions that were had both before and during the course of the auction between the licensee and the appellant. She observed that the licensee's knowledge or awareness of any mental health condition that she had around the time that he was assisting her with the purchase of the property will also be relevant.

[57] It is put that we also need to determine issues relating to the licensee's conduct in connection with the pre-auction offers, including retention of the deposit cheque and the provision of documents prior to the auction.

[58] We have before us the bundle of documents containing material that was before the Committee. A significant amount of further material has been provided by Ms Yan. We have also had the benefit of hearing from both the appellant and the licensee at the hearing.

[59] In particular, the auction video has been adduced to us. There are two separate recordings, one of the auctioneer (which does have audio) and one of the gallery (which does not). The video of the auctioneer is useful to understand how the bidding proceeded and the period for which the auction was paused and the licensee and appellant consulted. The footage of the gallery shows the licensee and the appellant (and one other female) sitting together and talking from time to time during the course of the auction.

[60] The auction was paused after the licensee made a bid of \$530,000. At that point in time the property was not "*on the market*". It is put that we may conclude that the appellant could have instructed the licensee, if she had become uncomfortable with the level at which the bids had been made, to make no further bids. She would not have purchased the property had she done so.

[61] The licensee also relies on evidence by the said registered valuer, Mr Nigel Dean. It is submitted for the Authority that this evidence is of very limited assistance

to us in determining the issues on appeal. We agree that the fact that the appellant purchased the property at a price consistent with Mr Dean's valuation, and that her property has since increased in value, is irrelevant if the licensee acted contrary to the complainant's directions regarding the level at which she was personally prepared to bid.

[62] We also accept that it is relevant what discussions there were surrounding the return of the deposit cheque, when the auction documents were provided to the appellant, and the circumstances surrounding the making of pre-auction offers.

### ***The Stance for the Licensee***

[63] Mr Rea observed that the main allegation in Ms Yan's complaint, as identified by the Committee, was that the licensee allegedly "*took control of the complainant's bidding*" at the auction and Ms Yan was the successful bidder purchasing the property for \$540,000.

[64] Mr Rea noted that the Committee had referred to the video evidence which, although lacking audio, showed Ms Yan and Mr Chang sitting together and talking from time to time at the auction and it was not apparent that Ms Yan was unhappy in any way or that Mr Chang seemed to be not following her instructions.

[65] As Mr Rea observed, Ms Yan has filed numerous documents, emails and other material in relation to this appeal. She seems to be maintaining that the Committee was wrong to find that Mr Chang did not take control of the auction. She asserts that he bid on her behalf against her will or, at least without her proper understanding, to purchase the said apartment at \$540,000 and that he should never have exceeded \$530,000.

[66] Mr Chang denies that he took control of the auction, or that he took advantage of Ms Yan in any way, and he says further that no mental health issues were apparent to him.

[67] He says that every decision relating to the purchase was made by Ms Yan, and that he acted in accordance with her instructions. Mr Rea also points to the evidence that Ms Yan was not at all unhappy with the purchase until about a week after the auction, and it appears to him that she has suffered from some form of buyer's remorse or, possibly, she has been told something by someone about the value of the property that has made her question her purchase.

[68] Ms Chang also denies the allegation that he failed to provide necessary documentation to Ms Yan prior to the auction.

[69] Mr Chang produced a 24 June 2014 email message from the vendor of the property, Ms Kay Roberts, confirming that the vendor was present at the auction and met Ms Yan, who seemed happy with the purchase and also queried buying the furniture. It also appeared to Ms Roberts that, although Ms Yan spoke in Chinese, she appeared to understand Ms Kay's English. However, those views of Ms Roberts are hearsay before us.

[70] Mr Chan also produced various letters of support which speak favourably regarding his honesty, integrity, and professionalism.

## ***Discussion***

[71] In his final oral submissions to us, Mr Rea put the central issue as whether or not Mr Chang had taken over bidding at the auction without the instructions of Ms Yan to do so. As he said, there is a stark conflict of evidence between him and Ms Yan about that. He says that he took instructions at every step of the auction bidding process. She denied that until, in the course of the hearing, she conceded that she did authorise Mr Chang to bid \$530,000 *“plus a little more if necessary”* on her behalf. However, she alleges that, in response to that authority, he first bid \$535,000 and then \$540,000 for the apartment rather than about \$1,000 more as she had contemplated.

[72] In referring to the said video of the auction, Mr Rea, inter alia, put it that it shows a lot of toing and froing between Ms Yan and Mr Chang in the course of the auction with ample time for them to deliberate and without there being any sign of pressure or rush upon Ms Yan.

[73] Mr Rea referred to the evidence that, upon purchase and signing of the auction contract, Ms Yan seemed very happy without any concerns but, as he said, about a week later there was a change of heart on the part of Ms Yan and that was when she telephoned the witness Ms Wang. However, the latter’s evidence is semi-hearsay.

[74] Mr Rea referred to Mr Dean’s expert evidence that the price paid at the auction was a fair price from the point of view of the complainant and that it has increased very substantially in value since then, due to the state of the Auckland property market. Mr Rea also emphasised that the commission amount obtained by Mr Chang is rather modest as he was not the listing agent for the apartment but only the selling agent. He referred to Mr Chang’s concern that his 10 year unblemished career is now in question.

[75] As Ms Earl also put it in her final oral submission, we have a factual or evidential dispute which we must decide on the basis of credibility. She agreed with Mr Rea that the issues are whether Mr Chang took control and bid at the auction to purchase the property at its price without the authority of Ms Yan; and also whether he placed her under undue pressure.

[76] As Mr Earl put it, Ms Yan’s evidence is that she instructed Mr Chang to bid a little more than \$530,000 and she did not authorise him to bid \$535,000 and then, after that, certainly not to \$540,000.

[77] Ms Earl noted the conflict in evidence, which we have covered above, about the retention by Mr Chang of the bank (deposit) cheque until matters were completed. He says he offered to return the cheque to Ms Yan but she said *“no”* he should keep it because, if necessary, she would buy the apartment at auction. She now says to us that he refused to return the cheque to her.

[78] With regard to the said video, Ms Earl noted that, while it is helpful and important, it has to be fitted into the context of the evidence of Ms Yan and Mr Chang and what is lacking is that it has no proper audio aspect.

[79] Ms Earl observes that, of course, Ms Yan’s allegations against Mr Chang are very serious and she referred to Rule 9.2 whereby a licensee must not put the customer under undue pressure.

[80] Also, as Ms Earl noted, the current fairly clear capital gain available to Ms Yan, should she sell the apartment, is irrelevant and the issue is what was she prepared to pay on the auction day and what did she authorise Mr Chang.

[81] Ms Earl observed that the allegation put to us by Ms Yan that Mr Chang did not advise her or allow her to take legal advice does not seem to have been put to the Committee. Nor was the issue whether he provided her with documentation in terms of the Rules but he states to us that he did; and that he advised her to take legal advice.

[82] Ms Yan was firm to us that she did not particularly wish to be bidding for the apartment at auction but simply wanted the opportunity to conduct negotiations with the vendor so that she could purchase it. We accept that would have been her ideal scenario.

[83] She said that in the course of the auction she did not move her mouth at any stage so as to indicate to Mr Chang that he was to bid on her behalf. Nevertheless, she asserted he did not have authority to offer \$535,000 and then \$540,000 as described above. She again emphasised that she simply sought the opportunity to be able to negotiate with the vendor.

[84] Ms Yan seemed to also be saying that, at the time she and Mr Chang spoke with the auctioneer, she needed an interpreter. She said that Mr Chang kept saying to her that, if she did not bid, she would not acquire the property. She maintains she did not agree with that and has auction experience and wanted to negotiate. She asserts that Mr Chang cheated her and dealt with the vendor and auctioneer against her will and would not allow her to negotiate with them.

### **Outcome**

[85] We have carefully assessed credibility in this case and have no hesitation in finding that the licensee, Mr Chang, is an honest witness. We do not accept the evidence of Ms Yan insofar as it conflicts with that of Mr Chang. We prefer his version of relevant events. Sadly, we feel that she is now not at all well but it seems that she was well at the time of the auction i.e. at all material times. Accordingly, she seems to be now rather confused about what actually happened in the auction process and, for some reason or other, from about a week after her purchase of the apartment very much has buyer's remorse i.e. she regrets her purchase even though she seems to have been thrilled about it for the first seven or eight days after the auction. We simply do not find her evidence convincing.

[86] Simply put, having analysed the evidence adduced to us we find nothing deficient in the relevant conduct of the licensee Mr Chang. We consider that the Committee's view is correct and that no further action should be taken against Mr Chang. Accordingly, we confirm the findings of the Committee and hereby dismiss this appeal.

[87] 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.

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Judge P F Barber  
Chairperson

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Ms N Dangen  
Member

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Ms C Sandelin  
Member