

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2015] NZREADT 50

READT 072/14

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

BETWEEN **JOHN SISLEY & PETER LISSINGTON**
Appellants

AND **REAL ESTATE AGENTS AUTHORITY**
(per CAC 301)
First respondent

AND **BARRY BRUNTON**
Second respondent

MEMBERS OF TRIBUNAL

Judge P F Barber - Chairperson
Mr J Gaukrodger - Member
Ms N Dangen - Member

HEARD at HAMILTON on 11 June 2015

DATE OF THIS DECISION 29 June 2015

COUNSEL

Mr W Hamilton for the appellant licensees
Mr R McCoubrey for the first respondent
No appearance by or for the second respondent complainant

DECISION OF THE TRIBUNAL

Introduction

[1] This appeal is about the duty of a real estate agent to implement a vendor's requirement for confidentiality of, in this case, a valuation of the subject property.

[2] Peter Lissington and John Sisley ("the licensees") appeal against a 13 May 2014 decision of Complaints Assessment Committee 301 finding they had engaged in unsatisfactory conduct in respect of a complaint made by Barry Brunton, retired but a former real estate agent, for the vendor of a life-style rural property. The property is owned by Jean Stuart Ltd.

Background Facts

[3] In mid 2012 Mr Brunton's son initially listed the property at 3153 Ohaupo Road, Rukuhia, Hamilton with Bayleys Real Estate for a one month marketing cycle for sale at \$1,775,000. No offers were produced during this time.

[4] The property was then listed with PPG Wrightson on 17 September 2012. At the time of listing the property, Mr Brunton provided the licensees with a valuation dated 18 April 2012 prepared by Fergusson Lockwood and Associates indicating a market value for the property of \$1,620,000. Mr Brunton gave strict instructions that the valuation document was confidential and that it was not to be disclosed to anyone, including prospective purchasers, in any circumstances; and was only to be used to complete the licensees' appraisal.

[5] An appraisal and marketing proposal for the property was supplied by Mr Lissington which suggested a market valuation of between \$1,600,000 and \$1,675,000 (plus GST). The licensees suggested the property be listed for \$1,675,000 (plus GST).

[6] After lengthy discussions about the listing price, it was agreed that the property was to be listed for \$1,675,000 and a listing agreement was signed on 17 September 2012.

[7] Mr Lissington telephoned a Mr Bill Hodgson whom he understood to be looking to purchase a lifestyle block. Mr Hodgson indicated that he was interested in purchasing the property and asked Mr Lissington not to tell his daughter, Leslie Hodgson who worked as the licensee's personal assistant, of that interest.

[8] Ms Hodgson disclosed the valuation to her father, who was the prospective and eventual purchaser of the property. Ms Hodgson admitted that she showed the valuation document to her father and that this was a breach of her employment contract.

[9] The property was ultimately sold to Mr Hodgson on 25 September 2012 for \$1,655,000.

Committee's Findings

[10] In its substantive decision of 13 May 2014, the Committee noted that the complaint about the said sale on 25 September 2012 focused on three issues:

- [a] That the licensees bullied and pressured the complainant and his family into agreeing to reduce the asking price for the property so that they could try and get a quick sale.
- [b] That Mr Lissington, having been explicitly told not to release the Fergusson Lockwood Valuation, did so to a potential purchaser who immediately lowered his offer on the property.
- [c] That the licensees were seriously negligent in their management of the sale. Mr Brunton claimed that the licensees repeatedly dropped out of communication and that they allowed chattels to be sold that were not part of the sale agreement.

[11] The Committee found that Mr Brunton had not qualified in what way he or his family were bullied and pressured into reducing the asking price of the property.

[12] The Committee found that if Mr Brunton, supported by his son, both of whom are experienced in the real estate industry, and Mrs Brunton were opposed to the price reduction, then they did not have to agree to it as they had. The Committee's view was that the licensee's suggestion to lower the asking price would seem logical and reasonable given that the property had been on the market for \$100,000 more than the price achieved and had not been sold.

[13] In respect of Ms Hodgson's disclosure of the valuation to her father, the Committee found that the licensees allowed a situation to occur where confidential information was released without authority of the complainant. On this basis, the Committee found that the licensees had engaged in unsatisfactory conduct.

[14] The Committee found that Mr Brunton had not offered any concrete proof that either licensee was negligent in their responsibilities or any evidence to support the allegation that the licensees allowed chattels to be sold that were not agreed to.

[15] In a 15 August 2014 decision on penalty, each licensee was fined \$1,000, censured, and required to pursue their apologies to the vendors.

Issues on Appeal

[16] The licensees appeal to us on the following issues:

- [a] Did the Committee err in finding that the licensees had engaged in unsatisfactory conduct?
- [b] Did the Committee err in imposing the penalty orders it did after finding the licensees had engaged in unsatisfactory conduct?

[17] The appeal before us was confined to the question whether the licensees allowed confidential information, i.e. the said valuation, to be released to a prospective (and the eventual) purchaser in breach of the vendors' directions for its confidentiality.

Relevant Legislation

[18] Section 72 of the Real Estate Agents Act 2008 defines "*unsatisfactory conduct*" 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."*

[19] We also set out the following Rules from the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009:

“5.1 A licensee must exercise skill, care, competence, and diligence at all times when carrying out real estate agency work.

...

6.1 An agent must comply with the fiduciary obligations to his or her client arising as an agent.

...

6.3 A licensee must not engage in any conduct likely to bring the industry into disrepute.

...

9.1 A licensee must act in the best interests of a client and act in accordance with the client's instructions unless to do so would be contrary to law.

9.2 A licensee must not engage in any conduct that would put a client, prospective client or customer under undue or unfair pressure.

...

9.7 A licensee must not mislead customers as to the price expectations of the client.”

The Evidence Adduced to Us

[20] The only witnesses before us were each of the licensees.

Salient Evidence from Mr J C Sisley

[21] Mr Sisley is a licensed salesperson with PGG Wrightson Real Estate in Hamilton as an independent contractor and is its sales manager for the Hamilton region. He has various qualifications and is also a registered valuer. He has been working in real estate since the early 1990s.

[22] Mr Sisley seems to operate his real estate activities through his company J Sisley Realty Ltd but it does not have a contractual relationship with PGG Wrightson except that it collects his commissions from PGG Wrightson. At material times J Sisley Realty Ltd employed Ms Leslie Hodgson to provide a PA service to him and Mr P D Lissington the other appellant. Ms Hodgson entered into a formal employment agreement with J Sisley Realty Ltd generally to assist the appellants with general administration and management. There is a clause 17 in that agreement which reads:

“As part of normal duties the Employee may obtain, or have access to, confidential information concerning the Employer and the Employer’s clients. Under no circumstances is any use to be made of this information except for purposes directly related to furthering the business objectives of the Employer.”

[23] At the time Ms Hodgson was so engaged, she had been working for another agency as a real estate agent. At material times to the present case, she was a licensed salesperson but we understand is not currently licensed, presumably, because she has let her licence lapse.

[24] In addition to her role with J Sisley Realty Ltd, Ms Hodgson was also contracted to PGG Wrightson under an independent contractor agreement to carry out real estate agency work. That document required her to be aware of the concepts of the REAA Code of Conduct and Client Care Brochure. Inter alia, when dealing with appraisals she was required to present them in a professional manner using PGG Wrightson designed templates. Her contract with Wrightson also includes a section which deals with confidential information and provides in part:

“6.2 All transactions, records and information pertaining to the business of PGG Wrightson shall be kept in strict confidence by the salesperson both during the period of engagement and after termination of this Agreement.

6.5 The salesperson shall ensure that confidential information of PGG Wrightson is not disclosed to any unauthorised person either by the salesperson directly or on account of any failure by the salesperson to safeguard adequately PGG Wrightson’s confidential information.”

[25] Mr Sisley outlined the background to his first meeting with the complainant on 6 September 2012 and then once more about that time; but it seems that the main contact in marketing the complainant’s property was Mr Lissington, although Messrs Sisley and Lissington operate very much as a close marketing team.

[26] In about mid September 2012, Mr Sisley worked with Mr Lissington to prepare an appraisal for the property. They used the valuation which the complainant vendor had previously obtained from Fergusson Lockwood to input details of the property into their appraisal.

[27] The first time that Mr Sisley saw that Fergusson Lockwood valuation was when Mr Lissington showed it to him after their first meeting with the complainant on 6 September 2012. Mr Lissington had then explained to him that the complainant (Mr Brunton) had given him the valuation so that they could use the property information in it to assist to prepare their appraisal but the complainant required that the valuation be *“not for the public”* and was not to be disclosed by them. Mr Lissington said he would keep the valuation in his desk drawer rather than in the filing cabinet in his room which contained the rest of the file for the complainant’s property. Mr Sisley states he did not take the valuation out of that drawer at any stage nor refer to it again. As a matter of practice he does not have regard to the views in a prior valuation, when preparing a property appraisal, but carries out his own genuine assessment and would only use the prior valuation for details about the property.

[28] Mr Sisley recollected that Ms Hodgson *“would have set up the appraisal document and inputted the property details from the valuation”*.

[29] Seemingly after quite a short time, Mr Lissington contacted a Mr Bill Hodgson as he expected he might be interested in such a property. Mr Hodgson was immediately very interested. He is the father of the said Ms Leslie Hodgson.

[30] Mr Sisley seemed to have no further involvement with this matter until 22 September 2012 when Mr Lissington telephoned him to tell him he had just met with Mr Hodgson who

had told him that Ms L Hodgson (his daughter) had provided him with a copy of the Fergusson Lockwood valuation.

[31] Mr Sisley stated to us that Ms Hodgson did not have permission to disclose the valuation to anyone. He responded to Mr Lissington that the latter should get in touch with the husband vendor (the complainant) immediately and tell him about the disclosure of the valuation. At that stage Mr Hodgson was intending to make an offer on the property but had not yet done so. Accordingly, Mr Lissington spoke with the vendor the next day, a Sunday.

[32] On the Monday morning (24 September 2012) Mr Sisley spoke to Ms Hodgson telling her that he knew she had disclosed the valuation to her father. She acknowledged that and it was agreed that they would talk further later as Mr Sisley had urgent commitments at that time. However that afternoon Ms Hodgson submitted her resignation. Mr Sisley accepted that in the circumstances but with regret in that Ms Hodgson had been a very good employee.

[33] Mr Sisley states to us that, nevertheless, he was very disappointed that she had provided the valuation to her father. He states that he takes his obligations as sales manager very seriously and endeavours to ensure that all his staff are aware of their obligations under the rules and also under their employment agreement. He has no doubt that Ms Hodgson was well aware of her obligations and observes that she was an experienced real estate agent in her own right.

[34] Mr Sisley noted that he later tracked down in the computer systems of the business the particular email by which Ms Hodgson had sent her father a copy of the valuation. Indeed, she had first sent an email at 12.28 pm on 21 September 2012 to her brother and the email was headed "*The Big Secret*". That did not seem to include the valuation but included photographs of the property and the chattels list. However at 12.31 pm that day, under the heading "*Emailing: Valuation*", she sent a copy of the Fergusson Lockwood valuation to her father.

[35] Mr Sisley regrets very much that Ms Hodgson disclosed the valuation and observes that she knew better than to do so and did it in deliberate breach of Mr Lissington's direct instructions to her that it was to be kept confidential. He feels that he and Mr Lissington took appropriate steps to keep the valuation confidential.

[36] Of course, Mr Sisley was carefully cross-examined by Mr McCoubrey as counsel for the Authority. Inter alia, it was put to Mr Sisley that he knew from the outset that Ms Hodgson was Mr Bill Hodgson's daughter and should not alarm bells have rung at the outset because he knew that Mr Hodgson was generally interested in the type of property being marketed for the complainant vendor? Mr Sisley responded that he and Mr Lissington deal with a lot of confidential information and are used to keeping it confidential. He emphasised that it was their policy to keep all valuations private.

[37] In re-examination, it was made clear that Mr Lissington was the listing agent in this case but that he and Mr Sisley work extremely closely together as a marketing team; although, in this particular case, Mr Lissington dealt with the complainant vendor and the Fergusson Lockwood valuation was kept in Mr Lissington's private (but unlocked) drawer in his office as distinct from his filing cabinet in that office.

Salient Evidence from Mr Lissington

[38] Mr Lissington is a licensed salesperson as a sales consultant with PGG Wrightson Real Estate in Hamilton. Mr Sisley is his manager. His evidence was consistent with that of Mr Sisley. He emphasises that the valuation was not released to Mr Hodgson by either Mr Sisley or him, but by their Personal Assistant Ms L Hodgson.

[39] Although the complainant Mr Brunton has not given evidence before us nor taken any part in this appeal, we think it appropriate to set out the following extract from the typed evidence-in-chief of Mr Lissington:

“11. Mr Brunton has said, in his statement to the Committee, that:

11.1 He did not give me the valuation on 6 September 2012, and that he did not give it to me until a later meeting.

11.2 The reason for providing the valuation was not to provide the property details because his son Mark had prepared a “comprehensive presentation” with the property details; and

11.3 The reason for providing the valuation was because he thought the asking price was too low

12. I do not agree with any of the statements made by Mr Brunton. In particular:

12.1 My clear recollection is that the valuation was provided at the first meeting. This was to allow us to get started on the appraisal straight away;

12. I do not recall Mark Brunton ever having provided a “presentation” regarding the property, and no such document is located on PGG Wrightson’s file; and

12.3 At the time I spoke with Mr Brunton, the property was listed with another agency and the asking price was \$1,775,000. It would not have made sense for Mr Brunton to give me the valuation (which estimated the value at \$155,000 less than the asking price) in order to demonstrate that the asking price was too low. At the time Mr Brunton gave me the valuation, we had not had a discussion about the potential asking price because we had not yet prepared an appraisal. Mr Brunton told me that he thought that the valuation was too low.

13. The valuation (bundle of documents, tab 3, pages 49-83) was dated 18 April 2012. It was addressed to Mr Brunton’s son, Mark. The valuation estimated the value of the property at \$1,620,000.

14. Mr Brunton gave me the valuation because it had full details of the property, including all of the buildings and the land title, references, which I would need in order to prepare an appraisal of the property.

15. When Mr Brunton gave me the valuation, he told me that it was “not for the public”. I replied that was not a problem.”

[40] Mr Lissington continued that he often receives a recent valuation on properties he is asked to market and such a valuation is helpful about details of the certificate of title,

building sizes, and the like. It is his careful practice to keep such a valuation document confidential regardless of whether he is explicitly instructed to by the vendor or not.

[41] Accordingly, he mentioned to Mr Sisley that he had such a valuation for use with their appraisal but that the valuation was "*not for the public*". He then discussed that valuation with Ms Hodgson because it was the practice that she assisted him and Mr Sisley with the appraisal document "*by setting up and formatting the document correctly, and inputting the relevant information*". He felt he needed to give her that valuation so that she could input the property details recorded in it; she was their only PA. Accordingly, she would have used the valuation to assist them with the appraisal.

[42] He said that he told Ms Hodgson that the valuation was to remain confidential and was not to be disclosed under any circumstance; but she could use it to get property details from it for the appraisal which they were preparing and that, accordingly, the valuation would be kept in his drawer in his office. He said that Ms Hodgson indicated to him that she understood "*all of this*".

[43] He continued to us that he uses the drawers under his desk to store personal items and all in the office know that and accordingly do not "*go in there*"; but it is not locked. That is where he usually stores valuations which vendors hand to him and he did that in this case.

[44] It seems that Messrs Sisley and Lissington also have administrative support from their office administrator, Ms Justine Ray, and all other documents regarding the listing of the complainant's property were kept in her cabinet, except for the valuation which was kept in Mr Lissington's private drawer but unlocked. Ms Ray's cabinet can be locked but, in fact, it seems to be left unlocked.

[45] The appraisal completed by Messrs Sisley and Lissington was that the market value of the property was between \$1,600,000 and \$1,675,000. He presented that to the complainant and his wife on 13 September 2012 and the complainant responded that if he could get anywhere near \$1,675,000 then "*I'm fine*". The property was listed with that as the asking price.

[46] Among other persons, Mr Lissington contacted Mr Hodgson with whom he had done business in the past because he knew that Mr Hodgson was looking to purchase a lifestyle block. He knew that Mr Hodgson was Ms L Hodgson's father. Mr Hodgson was interested and asked Mr Lissington not to tell his daughter that he was going to look at the property. Mr Lissington responded that he would not tell her but that if Mr Hodgson wished to make an offer then Ms Hodgson would be involved in helping Mr Lissington draw it up, and that was acceptable to Mr Hodgson. Mr Lissington had known Mr Hodgson for some time well before Ms Hodgson became an employee at the agency.

[47] Mr Lissington did not consider that Ms Hodgson being the daughter of an interested purchaser would cause problems because he knew that Ms Hodgson was a licensed salesperson in her own right of about five years experience in the real estate industry as a successful agent, and was well aware that she is bound by strict confidentiality requirements in terms of her employment agreements.

[48] At the stage when an offer needed to be prepared for Mr Hodgson, Mr Lissington said that he explained to Ms Hodgson that she should not discuss the details on the listing or the offer with her father. She responded that she understood.

[49] Mr Hodgson offered \$1,655,000 which was \$20,000 below the asking price. Mr Lissington took Mr Hodgson and his partner for another look at the property on 22 September 2012 and, in the course of that, Mr Hodgson told Mr Lissington that his daughter had provided him with a copy of the valuation and that he *“didn’t feel good about it”*.

[50] Mr Lissington then rang Mr Sisley to advise that and they agreed that he, Mr Lissington, should go and see the vendor Mr Brunton and let him know what had happened i.e. of the disclosure of the valuation to a prospective purchaser. Mr Lissington did that the next day, Sunday 23 September 2012, and apologised to the complainant who, Mr Lissington felt, did not seem particularly upset about the situation and said he was happy to review any offer from Mr Hodgson. Mr Lissington observed that, apparently, the complainant has denied that such a meeting took place but, Mr Lissington states that, subsequently, he has found diary notes recording that meeting but these were not before the Committee.

[51] Mr Lissington noted that, in a statement to the Committee, the complainant had suggested that Mr Hodgson had put a private offer to the complainant directly at \$1,675,000 but that Mr Lissington then disclosed the Fergusson Lockwood valuation to Mr Hodgson who then reduced his offer by \$25,000. Mr Lissington states to us that he did not know of any such private offer and that the only offer he knew of by Mr Hodgson to the complainant (and his wife) was that which the vendors accepted, namely, the said sum of \$1,655,000 which was \$20,000 below the asking price.

[52] Mr Lissington was comprehensively cross-examined by Mr McCoubrey. It seemed that in order to copy the valuation to her father Ms Hodgson had surreptitiously and, probably over a weekend, accessed the drawer in Mr Lissington’s personal desk in his office; although it was known that she could have ready access to the valuation. He said he had provided the valuation for Ms Hodgson to assist her setting out the appraisal of Messrs Sisley and Lissington and then he took it back from her and put it in his drawer. She knew that was a drawer of private and personal documents but he knew that Ms Hodgson knew the valuation was there and that she could access it, although he then continued *“but I thought she would only use it for the appraisal work”*. He said that it was her practice, in terms of any other documents in that private drawer, for her to ask Mr Lissington if she could access them because she knew he had much personal material in those drawers.

[53] Inter alia, Mr McCoubrey put it to Mr Lissington that should he not have set up some type of wall between Ms Hodgson and the valuation document? He said he felt not because she was experienced, knew all about confidentiality, and he would never have suspected her of breaching her duty.

[54] Mr Lissington accepted that it was not in the best interests of the vendors for Ms Hodgson to have had details of that valuation and there was a risk of her breaching confidentiality in favour of her father.

[55] Mr McCoubrey also put it to Mr Lissington that should he not have barred access by Ms Hodgson to that valuation? He responded *“no I’d known her as honest for a long time”*. However, he accepted that there was a very real risk that she would access the valuation but, he said, he had never had a reason to doubt her integrity.

[56] Our member Mr J Gaukrodger put it to Mr Lissington that would he allow such a situation to happen again. The response was that, with hindsight, he would probably

somehow quarantine such a valuation but, at the time, he was confident it was secure and was totally satisfied that Ms Hodgson understood her duty and would observe it.

The Typed Submissions for the Appellants

[57] Mr Hamilton submits that the actions taken by the appellants to prevent disclosure were adequate in the circumstances. He also submits that on the evidence the Committee could not reasonably have come to the conclusion that the appellants' actions were inadequate to prevent disclosure of the valuation.

[58] Mr Hamilton puts it that the actions taken by the appellants to prevent disclosure included:

- [a] J Sisley Realty Ltd ensuring that Ms Hodgson's employment agreement included specific terms regarding the use of confidential information and the requirement that such information not be used or disclosed for illegitimate purposes.
- [b] Mr Sisley's reinforcement of the importance of the obligations with respect to the use of confidential information by discussions within the office.
- [c] Mr Lissington's clear instructions to both Mr Sisley and Ms Hodgson that the valuation was to be kept confidential.
- [d] Mr Lissington taking the additional step of separating the valuation from the rest of the file and keeping it in a separate and personal filing cabinet.

[59] Mr Hamilton submits that the actions taken by the appellants met the standard prescribed by s.72 of the Act; that their actions accorded with the standard that a reasonable member of the public would expect from reasonably competent licensees; they were not incompetent or negligent; and their conduct would not be regarded as unacceptable by agents of good standing.

[60] Mr Hamilton emphasised that the appellants required Ms Hodgson's administrative assistance to set up the appraisal document; Ms Hodgson was the only PA in their office and there was no one else available to assist them with the appraisal; and that is the sole reason that the valuation was shown to her.

[61] It is submitted that there was no question of a conflict of interest for Ms Hodgson because, at the time the valuation was shown to Ms Hodgson, the listing had not been obtained and there had been no contact with her father regarding the property or any indication that he was interested in it.

The Typed Submissions for the Authority

[62] Mr McCoubrey notes that counsel for the appellants submits that, even if the appellants permitted a situation to occur which allowed the valuation to be released (which is denied), the appellants' actions did not fall short of the standard prescribed by s.72 of the Act.

[63] Mr McCoubrey also noted that counsel for the appellants has summarised the steps taken by the licensees to prevent disclosure of the valuation as set out in paragraph [58] above.

[64] Mr McCoubrey also put it that, in circumstances where a close family member is involved, it is only natural that there may be a temptation by staff to assist that person in purchasing the desired property. The Authority accepts that the licensees took some steps to ensure the valuation was kept confidential. However, the Authority put it that the licensees could, and should, have done more to ensure the valuation was not disclosed having been put on notice that Ms Hodgson's father was interested in the property.

[65] Accordingly, Mr McCoubrey submits that the decision of the Committee finding the licensees had engaged in unsatisfactory conduct was correct.

Discussion

[66] In final oral submissions to us, Mr Hamilton accepted our view that the vicarious liability theme put to the Committee is best left to one side and the issue is whether the way the appellant licensees handled the vendor's pre-listing valuation was satisfactory in terms of its need for confidentiality.

[67] Essentially, we are concerned with the conduct of the agents in the context of this case, the requirements of the vendor, and the general duty of the appellants as marketing agents of the property.

[68] As Mr Hamilton put it, there were firm contractual restrictions relating to confidentiality placed on Ms Hodgson in terms of her employment type contract. She was an experienced real estate agent who knew or should have known, her obligations and duties in the context of this case where her father happened to be a prospective purchaser dealing with the appellants. Her disclosure seems to have been quite deliberate and a flagrant violation of her duties.

[69] We consider that a complaint must be laid against her in terms of her apparent conduct on the above facts because, at material times, she was a real estate agent. The fact that she has not practiced that vocation since her said resignation is irrelevant to concerns or allegations about her conduct at material times. Should she seek to re-register as a licensee it is imperative that her record be up to date, realistic, and fairly put in terms of disciplinary issues. We accept that she may well have some answer to the allegations raised against her in evidence before us, and she is entitled to be heard. On the face of it, we would expect her to be charged with misconduct under s.73 of the Act.

[70] Mr Hamilton, helpfully, emphasised the general explanations given by each appellant in their respective evidence before us. He put to be critical that Mr Lissington gave Ms Hodgson a clear instruction that the valuation was to be kept confidential and she was being given access to it only for the clerical task of lifting property details from it to complete coverage of those aspects in the formal appraisal being prepared by the licensees together. There was no need for her to absorb the valuation opinion aspects in that valuation report. It was meant that she be given limited access to it only and she must have understood that in terms of her background and instructions from the appellants.

[71] Mr Hamilton emphasises that Ms Hodgson knew that the valuation document was kept separate as a very private document placed in the personal desk drawer of Mr Lissington and was not to be regarded as simply an office file document. Mr Hamilton puts it that she went to Mr Lissington's drawer surreptitiously, without authorisation, apparently over a weekend and copied it to her father. We feel that her father is to be commended for pointing out to Mr Lissington that the valuation had been disclosed to him and that he felt uncomfortable about that.

[72] Mr Hamilton also made the point that, at the time the valuation was first disclosed to Mr Hodgson, the appellants had not achieved a listing because the appraisal preceded that; so that (he puts it) they would probably not then have contemplated that Mr Hodgson would be a prospective purchaser and it would have been premature to see any risk in the situation.

[73] As Mr Hamilton also said, the appellants were entitled to expect integrity from an employee with Ms Hodgson's background and experience in the industry; and, almost immediately after Mr Lissington ascertained that Mr Hodgson was a genuine likely purchaser, Mr Lissington took the further step of telling Ms Hodgson not to discuss the matter with her father.

[74] Mr Hamilton submits that the culprit or person at fault in this case is Ms Hodgson and that the two licensees could only put confidentiality policies in place to a sensible standard. He also submits that there were no other precautions they could have taken.

[75] In his final oral submissions, Mr McCoubrey puts it that there was a clear risk from the outset of disclosure of the valuation in that Mr Hodgson was known to both appellants as a person interested in seeking this type of property and they knew that their joint PA was his daughter. Mr McCoubrey submits that alarm bells should have rung in their heads from the outset and not at a relatively late stage in the scenario. Mr McCoubrey puts it that, in the context of this case, Ms Hodgson should never have had access to that valuation document. He submits that, although the appellants would have known she understood her duties contractually and under the Act and its Rules, the temptation to assist her father should not have been put in her way and, in that respect, there was a failure on the part of the appellant licensees and they should have had a better system to cope with such an issue.

[76] Mr McCoubrey then seemed to concede that, perhaps, his submissions were a counsel of perfection but stressed, quite correctly, that a vital aspect of the real estate industry is client confidentiality.

[77] Accordingly, Mr McCoubrey submits that the steps taken by the appellants as real estate agents were inadequate in this case and that the decision and penalty imposed by the Committee must be upheld.

[78] We prefer to simply analyse the conduct of each appellant licensee in terms of s.72 of the Act and its Rules.

[79] A fairly small rural property with a rating value of \$2,280,000 was put on the market by vendors seeking, probably fairly realistically, \$1,675,000. Although, in terms of negotiations between the vendors and Mr Hodgson over price, the vendors knew that the valuation had been disclosed to Mr Hodgson and, presumably, readily enough agreed to sell him the property at \$1,655,000, he must have been aided by having had a confidential valuation report wrongfully disclosed to him. That report opined that the appropriate valuation of the property was \$1,620,000. The purchaser was able to acquire the property for \$1,655,000 which was \$20,000 less than the asking price.

[80] As we have indicated above, it surprises us that no complaint has yet been laid against Ms Hodgson for her alleged misconduct in the scenario of this case. She was a licensee at material times and may wish to regain that status one day. Accordingly, it is highly desirable that her file at the Authority should be in a realistic state.

[81] We consider that the way the Fergusson Lockwood valuation, particularly, in terms of the vendor's requirement that it be kept very confidential, was merely kept in an unlocked drawer in Mr Lissington's office was rather casual on his part and, indeed, on the part of Mr Sisley who knew about that. We feel that both licensees over-relied on the integrity of Ms Hodgson.

[82] Having said that, in terms of Ms Hodgson's background there is a strong argument that they were entitled to rely on her integrity and professionalism. They were aware of the confidentiality requirements in her contract of employment and they had spoken to her directly requiring particular confidentiality of the Fergusson Lockwood valuation in terms of the interest, or the likely interest, in the property of her father. There is also the point that when Mr Hodgson first expressed interest in the property, he particularly told Mr Lissington that he did not want his daughter to know that. Presumably, he meant he did not want her to know that he would be spending more money on realty.

[83] We infer that Ms Hodgson clearly knew she was acting wrongfully in disclosing the valuation to her father. On being accosted she did not argue, but simply apologised and resigned. It should have been obvious to her, at all stages, that her breach of confidentiality in favour of her father was a serious breach of the Act and of integrity for a real estate agent. Looking at the facts overall we find on the balance of probabilities there could be no doubt that she must have been aware of that. Accordingly, that wrongful conduct on her part could to some extent, perhaps, exonerate the appellant licensees who were entitled to rely on her integrity.

[84] The issue of liability for unsatisfactory conduct is not straightforward in this case. On the one hand, the appellants were too casual about providing confidentiality to the Fergusson Lockwood report; and the measures they took in terms of storage of the report and oral directions to Ms Hodgson for its confidentiality proved to be quite inadequate. On the other hand, there was a practice for staff at the agency to accord privacy to items in Mr Lissington's desk drawers; Ms Hodgson knew that; Ms Hodgson was well aware of her duty of confidentiality to the appellants, her employer, and the vendors; and we can understand the licensees relying on her integrity in the context we have outlined above.

[85] As Mr Hamilton emphasised, it does seem that Ms Hodgson was given clear instructions that she could use the Fergusson Lockwood valuation for a limited extent and, otherwise, the document was absolutely confidential and there was no reason for her to comprehend its reasoning or bottom line valuation figure. Also, at the time Ms Hodgson was permitted to access that valuation to set out the licensee's appraisal document, her father could not necessarily be regarded as a prospective purchaser. However, she was easily able to access it and copy it to her father at a later stage. As we have emphasised already, in context the appellants were entitled to expect complete integrity from Ms Hodgson.

[86] We remain conscious that, although the appellant licensees had good policies about confidentiality of documents, the implementation of those policies has proved to be rather casual and lax. We cannot agree with the submission of Mr Hamilton that there was no other precaution they could have taken.

[87] We conclude that, while we can understand the feelings of the appellant licensees that they should not be regarded as having failed their own duties in any way and that it was Ms Hodgson who failed her obligations, the fact is that their methods for giving the complainant vendors confidentiality were unsatisfactory. Possibly because they are so busy they did not adequately turn their minds to the scenario which evolved and was always quite likely to evolve.

[88] Accordingly, we confirm the decision of the Committee which found that, in relation to the unauthorised release of the valuation document, the licensees engaged in unsatisfactory conduct. We also consider that the Committee's penalties of a fine of \$1,000 and a censure against each agent are fair and reasonable.

[89] We observe that although s.50 of the Act requires that a salesperson must be properly supervised and managed by an agent or a branch manager, that was not raised in this case, presumably, because Ms Hodgson was acting as a personal assistant at all material times and, in any case, matters are covered by s.72.

[90] Accordingly this appeal is dismissed and the outcome before the Committee is confirmed.

[91] 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 N Dangen
Member