

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2015] NZREADT 58

READT 105/14

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

BETWEEN **IAN AND CHRISTINE MILLWARD**

Appellants

AND **REAL ESTATE AGENTS AUTHORITY (CAC 304)**

First respondent

AND **ZANE COZENS**

Second respondent

MEMBERS OF TRIBUNAL

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

HEARD at TAUPO on 1 July 2015

DATE OF THIS DECISION 27 July 2015

APPEARANCES

The appellants on their own behalf
Ms N Copeland, counsel for the Authority
The second respondent licensee on his own behalf

DECISION OF THE TRIBUNAL

Introduction

[1] This is a case about, in particular, whether vendors were over-pressured by a real estate agent to reduce their asking price. That is a quite common complaint against real estate agents.

[2] Dr Ian and Mrs Christine Millward (“the complainants”) appeal against the decision of Complaints Assessment Committee 304 to take no further action on their complaint against Mr Zane Cozens (“the licensee”) which we cover below.

[3] Mr Cozens is a licensed salesperson under the Real Estate Agents Act 2008 (“the Act”) employed by Westerman Cozens Realty Ltd trading as Bayleys Turangi (“Bayleys”). He was the listing agent.

Background

[4] On 4 February 2014 the complainants listed their property at 31 Waitetoko Road, Turangi, for sale at an asking price of \$735,000 we are told, but no reference to price is set out in the agency contract. We are also told that was a re-listing as the property was originally listed in 2009. On 8 February 2014 a contract was presented to the vendors for \$650,000 and subsequent negotiations resulted in an agreed sale price of \$685,000.

[5] On signing the sale and purchase agreement for the property, the complainants instructed Mr Cozens not to contact the tenants of the property regarding the fact that it had been conditionally sold. However, the tenants later became aware, via Mr Cozens' office, that the property had been so sold.

[6] The complainants and Mr Cozens negotiated a reduced commission on the sale of the property. However, the particulars of the reduction were later disputed. After involvement by Ms Westerman from Bayleys at Taupo, the parties reached a resolution regarding the commission dispute, and letters of apology were provided by Mr Cozens to the complainants and the tenants for the unauthorised communication of the fact of the sale from a staff member at Bayleys' local office.

[7] Subsequently, the complainants complained to the Authority that Mr Cozens had:

- [a] Placed them under pressure to sell their property at a low price;
- [b] Breached confidentiality by informing their tenants of the sale when he was expressly told not to; and
- [c] Charged higher fees than initially agreed.

[8] The Committee did not believe that a claim of undue pressure could be supported on the evidence.

[9] In relation to Mr Cozens' office contacting the complainants' tenants, the Committee viewed this as a simple mistake that did not reach the threshold of unsatisfactory conduct.

[10] In reaching its decision to take no further action on the complaint the Committee also noted that it appeared there was a lack of detail and certainty around the commission to be charged and the parties had come to an agreed reduction themselves.

Remedies Sought

[11] Should we find unsatisfactory conduct, as remedy for their complaint the complainants seek:

- [a] Recognition and an apology from Mr Cozens; and
- [b] Reimbursement to the complainants of half of Mr Cozens' commission (i.e. repayment of \$12,500).

Salient Evidence

The Evidence of the Complainants

[12] Dr and Mrs Millward provided detailed written evidence (intermingled with submissions) but it is simplest to record Dr Millward's concerns in his oral evidence to us.

[13] Essentially, he feels that the licensee did not act in the best interests of himself and Mrs Millward as vendors. Their property was listed at \$735,000 but Dr Millward regards the licensee as having "*beaten him down with pressure upon pressure*" to sell at \$685,000 which was \$50,000 less than he ever intended. He feels that he was pressured and pressured by the licensee to keep reducing his price rather than the licensee supporting him in standing firm so that the prospective purchasers would increase their price.

[14] Dr Millward stresses that he found the sale process through the licensee incredibly stressful and upsetting and, indeed, he feels bullied by the licensee. It particularly galls Dr Millward that the buyers were known to be keen and that the Millwards did not need to sell.

[15] Dr Millward says he now feels foolish and cannot understand why he kept acceding to the licensee's pressure to drop his price and that, in the course of the sale process, he wished to either stand firm or take the property off the market, but he felt bullied and threatened by the persistency of the licensee. Dr Millward takes the view that because the licensee so pressured him, and the vendors have dropped \$50,000 from what they sought, he and Mrs Millward should not need to pay \$25,000 commission to the licensee for such poor service as they allege.

[16] It also annoys the vendors that the purchaser was late in paying the deposit but they were not told about that at the time.

[17] It particularly annoys the vendors that they required that the tenants in the property not be told it was being sold because the tenants were excellent and the sale with the ultimate purchaser commenced as conditional and might have folded, so the vendors did not want to run the risk of losing such good tenants. However, a staff member in the licensee's office responded to a question from one of the tenants and disclosed that the property was subject to a sale contract. The vendors felt that put them at risk of losing rental income of \$20,000 per annum from those tenants.

[18] The above matters were covered in much detail in evidence before us.

[19] It was covered that the licensee's appraisal was between \$690,000 and \$720,000 for the property. The licensee put it to Dr Millward in cross-examination that the market value of the property was near that figure. Certainly, the market price achieved was near the bottom of that range. The licensee put it to Dr Millward that at the completion of the sale transaction he had been "*happy*" at commission being reduced from \$28,893.75 (including GST) to \$25,000 (including GST). Dr Millward responded that he was not "*happy*" about that sum but accepted it at that time.

[20] The licensee put it to Dr Millward that, at the time there was a delay in collecting the deposit from the purchasers, he (the licensee) was out of the sale process at the requirement of Dr Millward.

[21] The main theme of Dr Millward's evidence is that the licensee kept pressuring him to reduce his price and fit in with the approach of the offerors when Dr Millward did not want to give ground.

[22] A factor of concern to Dr Millward is that Mrs Millward has been the personal assistant to the licensee for a year or so and, therefore, had trust and confidence in the licensee; and Dr Millward feels that the licensee took advantage of that to put pressure on Dr Millward to accept a lower than expected sale price.

[23] There is also a point that, allegedly, the licensee reneged on his initial offer to remove the GST component from the commission.

[24] Dr Millward said that, inter alia, he sought an apology from the licensee for his alleged conduct and the return of half of the commission paid.

[25] Inter alia Dr Millward covered that, originally, Bayleys at Taupo assessed the value of the property at 1.1 million dollars and, about that time, a Turangi agent placed a value of \$950,000 on the property. However, a few years after that, the Government valuation was put at \$790,000. Dr Millward then obtained a private valuation and that valuer put the value at \$795,000 but Dr Millward noted he had omitted the upper floor of the property in his assessment so that valuation was increased to \$835,000. Then there was a new Government Valuation issued at \$680,000 but, shortly after that, a specialist valuer put the sum of \$735,000 as appropriate.

[26] It seemed that in the course of the sale process the licensee was at one stage on holiday and his colleague Mr M Heappey assisted the vendors. However, the licensee insisted on taking back the brief when he returned from holiday but Mr Heappey ultimately found the purchasers and dealt with them so that the licensee (who was the listing agent) had no contact with the purchasers but only with Mr Heappey.

[27] Although many steps in the sale process were covered and analysed before us we do not need to detail those.

[28] Dr and Mrs Millward believed that the licensee told them at about the time the sale contract was signed that an administration fee and GST and the commission would be deducted from commission but that did not happen at the time commission was dealt with until Dr Millward queried the situation.

[29] Dr Millward explained that he and Mrs Millward had a very good relationship with the tenants at the property and wished to personally inform them if the sale took place because that had huge implications for the tenants having to find new premises and move their belongings. They had kept the tenants in the frame that they were endeavouring to sell the property and are concerned that someone at the licensee's office told the tenants of the sale before they were able to do so.

[30] It also concerned Dr Millward that, allegedly, the licensee tended to press Mrs Millward with the theme that the asking price was far too high and the property could only sell for about \$680,000, and that she should so advise Dr Millward.

[31] Dr Millward felt that the licensee's discussions with Mrs Millward were "subversive" to the vendors and that the licensee attempted to create an urgency for

the vendors to drop their price and eventually sell at \$685,000 when they did not wish to and there was no need to do so.

The Evidence of the Licensee

[32] Essentially, the licensee states that he has been a highly regarded and successful real estate agent of integrity in the area for 23 years. He is a Taupo District Councillor and has tertiary qualifications and over 100 business awards, including business person of the year for the Taupo district. He is particularly distressed at the personal allegations made against him by the vendors.

[33] The licensee maintains that he did not badger or pressure the vendors; that there was a misunderstanding over the removal of the GST content from commission in that he only agreed to ask his colleagues if that reduction could be given to the vendors, and eventually it was. He says that he has apologised for a staff member disclosing to the vendors' tenants that the property had been sold and that he was not in any way responsible or involved in the tardiness of the purchasers to pay the deposit.

[34] The licensee has responded in typewritten detail to the very detailed allegations against him by the vendors but, essentially, he denies these allegations and insists that he was always endeavouring to work in the vendors' best interests.

[35] The licensee was carefully cross-examined by Dr Millward and then by Ms Copeland. The licensee insists that Dr Millward has a strong personality and is not a person to be pressured or bullied.

[36] The licensee explained to Ms Copeland that the property had been on the market for four or five years before it sold and that the purchasers were the first to actually make an offer so that he was concerned that they not be lost. The licensee was also conscious that, over the five years the property was on the market, its value had decreased (he felt) by about 33 percent in terms of falling property values in the area.

[37] The licensee said he tried very hard to have Mr Heapey, who was dealing with the purchasers, have them increase their offer rather than the vendors reduce their asking price.

[38] The licensee absolutely denies that he put any undue pressure on Dr and Mrs Millward. However, he accepts that his firm erred in disclosing to the tenants of the property that it had been sold.

Legal Principles

[39] We were referred to the following provisions of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 ("the Rules"):

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

Rule 6.2: A licensee must act in good faith and deal fairly with all parties engaged in a transaction.

Rule 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.

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

[40] “Unsatisfactory conduct” is defined in s.72 of the Act which reads 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.”*

Issues on Appeal

[41] There are three main issues for us to determine:

- [a] Did Mr Cozens place undue pressure on the complainants to sell their property for less than they wanted to?
- [b] Did Mr Cozens act contrary to the complainants' instructions when the tenants were told that the property was sold?
- [c] What was agreed upon in relation to the amount of commission?

The Stance of the Authority

Failure to Follow Instructions

[42] Ms Copeland observed that licensees must act in the best interests of their clients and act in accordance with their client's instructions. She noted that the complainants state that they gave strict instructions to Mr Cozens not to tell their tenants of the impending sale of their property, as they wished to tell their tenants themselves in order to maintain their good relationship. Mr Cozens accepts that they did ask him not to tell the tenant about there being a contract on the house.

[43] According to Mr Cozens, seven days after the sale and purchase agreement was signed, the purchasers' agent asked Mr Cozens' personal assistant to arrange for a building inspection. When Mr Cozens' personal assistant called the tenant, the tenant asked her whether there was a contract on the house, and she said “yes”. Mr Cozens states that he would not have expected his assistant to lie to the tenant when asked a direct question.

[44] Mr Cozens has also noted that he apologised to both the tenant and the complainants for this error in communication.

[45] The Committee considered that the tenants' finding out about the sale was a "*simple matter*" and therefore took no further action on this part of the complaint. Ms Copeland put it that it will be for us to assess the evidence on this issue but submits that, should we reach a similar view of the evidence as the Committee, a decision to take no further action would be available.

Undue Pressure

[46] Ms Copeland noted that the complainants submit that, through various actions on Mr Cozens' part, they felt pressured into accepting an offer price they were unhappy with, and would not have accepted, but for the pressure they were put under. For instance the complainants have argued:

- [a] Mr Cozens said to them "*I advise you to reduce the price – it is in your best interests, trust me*";
- [b] Mr Cozens used his relationship with Mrs Millward to place pressure on them to sell their property, and effectively abused her trust. Mrs Millward had worked for him;
- [c] To appease them, Mr Cozens offered to forgo the administration fee and deduct the GST component, which he then reneged on after the sale when his office would not allow him to do this; and
- [d] Mr Cozens presented a "*sell at all costs*" outlook from the start.

[47] Mr Cozens in response has stated that he never put any undue pressure on the complainants, and by way of support for this position has referred to:

- [a] The text messages between himself and Mrs Millward, which he says demonstrate no undue pressure;
- [b] Mr Millward's own "*belligerent*" behaviour during the final decision discussions;
- [c] Mrs Millward hugging him after the deal was done; and
- [d] Mrs Millward texting him about what a fine job he had done, the evening after the sale had been agreed.

[48] Ms Copeland also notes that we have previously emphasised that licensees must be live to the pressures on their clients and take care that such pressures are managed appropriately.

Complaint about the Agreed Commission

[49] There is a dispute between the parties about what was agreed with respect to the commission.

[50] Ms Copeland put it that the complainants state that in a conversation with Mrs Millward, Mr Cozens agreed to subtract the administration fee and the GST from his commission, but Mr Cozens did not subtract the GST.

[51] She noted that Mr Cozens agrees that he had agreed not to charge the administration fee, however, he states that he did not agree to subtract the GST. He stated that he said he would talk to Ms Westerman at Bayleys about the GST portion, but he never confirmed that it would be removed and states that the complainants must have become confused. Mr Cozens further stated that when his business partner (Ms Westerman) got involved with the dispute between him and the complainants, the commission was reduced to \$25,000 after discussions between all parties.

[52] The Authority submits it is very important that variations to listing agreements, such as to the amount of commission to be claimed, are always recorded in writing to avoid confusion and disagreement later as to what was agreed. We have endorsed such an approach a number of times in cases involving licensees giving clients assurances as to avoiding a double commission possibility.

[53] In her final oral submissions, inter alia, Ms Copeland put it (and addressed) that there are four key issues, namely:

- [a] Did the licensee put undue pressure on the vendors to sell for less than they wished to?
- [b] Did the licensee breach his instructions to not tell the tenants of the sale?
- [c] Did the licensee breach his agreement with the vendors over commission?
- [d] Why were the vendors not informed of the late payment of the deposit? This is a new issue which was not put before the Committee but, in context it is a very minor issue.

Submissions from the Solicitor for the Licensee

[54] We received helpful typed submissions for the licensee from Mr T R Mounsey, barrister and solicitor of Taupo, although he was not instructed to appear before us.

[55] Mr Mounsey clarified that there had been various real estate firms involved with endeavouring to sell the property over about the past four years and it seemed to have been taken off the market for about a year from November 2013. The conditional contract for \$685,000 was entered into on 8 February 2014 with settlement on 30 April 2014. The deposit of \$68,500 was paid on 11 March 2014.

[56] Mr Mounsey noted the impression of the vendors that commission had been agreed at \$26,000 inclusive of GST but they expected that a \$500 administration fee and GST would also be deducted. The amount of commission was resolved on 19 February 2014 at \$25,000 including GST.

[57] Mr Mounsey pointed out that the disclosure of the sale to the tenants arose because the licensee's office needed to organise a time for the purchasers' building inspector to attend at and assess the property; and that the sale was conditional at that point.

[58] Mr Mounsey puts it, inter alia, that by virtue of the property having been on the market for a long time it can be inferred that the complainants wished to sell. He points out they had obtained numerous appraisals and valuations and knew the variety of opinions about the worth of their property at material times. As

Mr Mounsey also noted, the sale and purchase agreement shows that there was a negotiation with numerous changes to the prices each party was willing to accept. He noted the evidence that the vendors had in their lives sold nine and bought ten houses and that Dr Millward had participated in a course on negotiation.

[59] Mr Mounsey put it that, at any time, Dr Millward could have sent the licensee away and asked for more time to think the deal over. Indeed, there was evidence from the licensee that he suggested that but that Mrs Millward wanted to get matters resolved.

[60] Inter alia, Mr Mounsey referred to the vendors having signed the agreement and accepted the price of \$685,000 expressing gratitude to the licensee and Mrs Millward putting it that *"thank you for everything today not quite the result we would have liked but a bird in hand is better than two in the bush ..."*.

[61] Mr Mounsey submitted that we should take into account that the disclosure of the staff member to tenants was inadvertent and occurred on 14 February 2014 some six days after the contract had been signed and was related to organising a building inspection so that the conditions in the agreement of sale and purchase could be satisfied by the purchasers. Mr Mounsey put it *"the vendor had therefore six days to notify the tenant about the fact that there was a contract on the house but, for whatever reason, had decided not to take that opportunity"*.

[62] Mr Mounsey referred to an email of 19 February 2014 recording, with regard to commission, that the vendors were *"most appreciative that we are agreeable on the \$25,000 ... inclusive of GST"*. He put it that the parties had negotiated and resolved that issue.

[63] Finally, Mr Mounsey noted that the remedy the complainant seemed to be seeking is \$13,000 as compensatory damages for the loss they allege they have suffered on the sale of their home, and for their stress. Mr Mounsey referred to *Quin v The Real Estate Agents Authority* [2012] NZHC 3557 where Brewer J stated at paragraph [66]: *"[66] However, the 2008 Act does not give a Committee the power to order a licensee to pay compensatory damages, either by way of indemnity or for loss of expectation"*. As Mr Mounsey submitted, the remedy which the complainants seek is simply unavailable on the facts of this case.

Discussion

[64] We record that a Mr J Penrose gave evidence in support of the vendor complainants maintaining that the licensee had a propensity in his general business life as a real estate agent to pressure and bully vendors over price. However much of that evidence was of a hearsay nature and we prefer to focus on the evidence before us about the alleged conduct of the licensee.

[65] Essentially, Mr Penrose alleged that he also had a bad experience with Mr Cozens whereby Mr Cozens also pressured him to reduce his sale price. This evidence is offered to try and demonstrate that Mr Cozens tends to behave in a particular way, thus supporting the complainants' complaint about him. It is propensity evidence.

[66] Whether or not this evidence is admissible is a matter for us upon consideration of both s.43 of the Evidence Act 2006 (re propensity evidence) and s.109 of the Real Estate Agents Act 2008 (re our wide power to receive evidence); and it is also

entirely a matter for us how much weight should be attached to the evidence if admitted. We take it into account but do not give it much weight in the context of all the evidence.

[67] There is a conflict of evidence between the parties as to whether the licensee imposed undue pressure on the vendors and, more particularly, on Dr Millward. We do not know whom to believe as both Dr Millward and the licensee seem honest and credible persons to us. It may have been that the licensee was somewhat over-eager to achieve a sale. We recognise that it must be part of the makeup of a salesperson to endeavour to create a sense of urgency and fear of losing a prospective purchaser into the mind of a vendor and that, generally, building up a modest degree of pressure on a vendor is not unusual.

[68] However, we accept that should the line of acceptable pressure be crossed, and become undue pressure, then that would be a breach of a licensee's fiduciary duty to the client. In particular it would breach Rule 9.2. It would be unsatisfactory conduct in terms of s.72 of the Act. Of course, if the added ingredient of bullying exists that is even more reprehensible.

[69] It is not easy to decide in this case whether that line has been crossed. Dr Millward is convinced that it was, but the licensee denies that completely. We take into account that selling a home is sometimes a very stressful experience for the vendors, especially if the market is difficult at the time and they have been waiting for some years for a prospective purchaser to surface.

[70] It is desirable that either a vendor's price expectations be met or that the vendor willingly reduces the price. It is most undesirable that a vendor be pressurised into selling at a price that will always be regretted. Real estate agents must not impose undue pressure on vendors simply to get a sale so they gain commission income. That is most unprofessional.

[71] Having said all that, while we respect how Dr and Mrs Millward feel, we cannot be satisfied that any sense of pressure and urgency imposed on them by the licensee was undue in all the circumstances.

[72] With regard to the vendors' concern that their instructions to withhold advice of sale from their tenants so that they could handle that aspect in view of their cordial relationship with the tenants, the licensee admits that his staff failed him in that respect due to the way in which a question was put to them which needed to be answered honestly. We consider that the licensee's sincere apology in that respect from the outset must ameliorate that breach of duty. Although it is not particularly relevant to the conduct, we note that no harm arose out of the breach.

[73] With regard to the question of a reduction in commission, there is a conflict of evidence and some confusion as to what reduction the licensee contemplated or, possibly, agreed to at the material time. One can understand his response that he could not have agreed to waive the administration fee and GST without referring it to his business colleague. It is relevant that, in fact, the licensee has reduced his entitlement to commission significantly. In that respect we think that unsatisfactory conduct cannot be sheeted home against the licensee on the balance of probabilities.

[74] Similarly, we do not think that the delay in payment of the deposit can be visited upon the licensee himself. It seems he had been required to remove himself from the sale process by Dr Millward at that stage. One would have expected the lawyers

for the vendors to have pursued payment of that deposit, although they did not seem to have been promptly briefed by the vendors. It is of peripheral relevance that there was no loss of the deposit. The conduct or lack of it in that respect by the licensee cannot be described as unsatisfactory in terms of the definition of that word in s.72 of the Act.

[75] We accept that Dr Millward (together with Mrs Millward) is very upset at having sold the property for \$50,000 less than he now feels, and at material times felt, it to be worth. We believe that he truly feels that the licensee placed him under over-intense pressure, even amounting to bullying, to sell at \$685,000 when he did not wish to. It needs to be recognised that he is a well-educated and, clearly, most intelligent and sensible person; and he elected at material times to sell at that figure. We can understand that the sale process may have been too intense and fast for the vendors at the time and that they feel their agent was working rather for the benefit of the purchasers than for them the vendors. Having said that, we record that the licensee completely denies all allegations against him except that his staff member erred in honestly answering a question to one of the tenants to say that the property had been sold when the vendors' instructions were that only they were to so advise the tenants.

[76] The sale transaction must be looked at in terms of commerce and trading in residential properties. Here a background factor is that prospective purchasers had surfaced after the vendors and the licensee had been waiting for about five years to sell; so that, even though the vendors did not need to sell, it was important that, within reason, the licensee not lose the prospective purchasers over the issue of price.

[77] Dr Millward is clearly a most intelligent man who does not expect to be pushed around and is unlikely to be. However, for some reason he went along with the seemingly usual blandishments of an experienced real estate agent who, perhaps, was a little over-insistent. We simply do not know whose version of events is correct. We are not convinced that the licensee over-stepped the mark in terms of putting pressure on the vendors.

[78] We state again that we can understand how stressful the above sale process experience has been for Dr and Mrs Millward. We accept that they are not litigating types and are pursuing their concerns in good faith rather than to seek some type of indirect compensation. We can only deal with the allegations against the licensee in terms of his conduct towards the complainants. We accept that the licensee is a very experienced and well known real estate agent in the area and, seemingly, with such a good reputation that he is very successful. We can understand that to be complained about by people of the status of Dr and Mrs Millward must be profoundly distressing to him. He is entitled to defend his reputation.

[79] All in all, while we understand how Dr Millward feels, we cannot disagree with the overall decision and reasoning of the Committee. Nevertheless, real estate agents need to understand that over-aggressive pressure on a vendor to drop, and keep dropping, price so that a sale results and commission for the agent is achieved may amount to unsatisfactory conduct (or, possibly, even to misconduct). In this particular case, we find that the appellants have not shown that there was unsatisfactory conduct on the part of the licensee i.e. they have not shown that the Committee erred in its views.

[80] We find that the licensee did not place the vendors under undue or unfair pressure to lower their asking price and sell for less than they wanted to.

[81] We note the licensee's admission (and apology for) that a staff member disclosed to the tenants that the property was under a conditional sale contract when the vendors had required that to be kept confidential for a reasonable period. In fact, about seven days seemed to have passed before the erroneous disclosure and it was made in the course of due diligence for the purchasers.

[82] We find that the licensee did not charge higher fees than he initially agreed as he had merely agreed to endeavour to lower the commission and, upon Mr Millward's protest, was able to do that.

[83] Also, the licensee was not responsible for the delay in collecting the deposit from the purchasers nor for the vendors being unaware of such delay.

[84] It follows that there can be no question of compensation to be dealt with.

[85] As we have explained above, on the balance of probabilities we cannot be satisfied that there has been unsatisfactory conduct on the part of the licensee. Accordingly, this appeal is dismissed. We agree with the outcome decided upon by the Committee and its decision remains extant.

[86] 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