

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

Decision No: [2015] NZREADT 67

Reference No: READT 043/15

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

BETWEEN

RUJING JIN

Appellant

AND

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

First Respondent

AND

FRANCIS FAN

Second Respondent

MEMBERS OF TRIBUNAL

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

APPEARANCES

Counsel for Appellant – Y Lee
Counsel for the REAA – C Paterson
Counsel for Second Respondent – Tim Rea

DECISION OF THE TRIBUNAL

[1] The appellant appeals against the decision of the Complaints Assessment Committee (Committee). The facts are set out in that decision.

[2] One of the grounds of appeal is that the Committee erred in finding the appellant asked the agent to release the deposit to her. The appellant says that in fact that appellant requested the agent to return the deposit to the purchasers.

[3] In their decision dated 24 October 2014 the Committee said at paragraph 1.3:

The second issue is that both the complainant and the purchasers have requested the deposit of \$30,000 [sic] be held in the agency's trust account be released to them respectively.

[4] After discussion between the parties, the appellant and counsel for the respondents have reached agreement that this paragraph was factually incorrect.

[5] The appellant has submitted that the correct position is:

(a) The appellant, Ms Jin (who was the vendor on the relevant transaction), requested Barfoot & Thompson to release the deposit to the purchasers, Mr and Mrs Konishi.

(b) The purchasers, through their solicitor, Mr Hickson, instructed Barfoot & Thompson, unequivocally, not to release the deposit to the purchasers.

(c) Barfoot & Thompson acted in accordance with the direction by the purchasers to retain the deposit undisbursed in its trust account, rather than pay the deposit to the purchasers as requested by the appellant.

[6] The appellant and the respondents all agree that in the circumstances faced with a direct instruction from the purchasers' solicitor, Barfoot & Thompson were obliged to retain the deposit in their trust account and this cannot be unsatisfactory conduct or misconduct by Mr Fan.

[7] The parties therefore request the Tribunal to make an order under s.111 of the Real Estate Agents Act 2008 modifying the decision of the Committee to reflect the correct facts as set out above but otherwise confirming the decision of the Committee.

[8] Pursuant to s.111(5) of the Real Estate Agents Act 2008 if the Tribunal modify the determination of the Committee it may exercise any of the powers that the Committee may have exercised. Pursuant to s.93 the Committee may order that some or all of the terms of an agreed settlement between the licensee and the complainant are to have effect.

[9] The Tribunal consider that the appropriate order therefore is an order under s.111(5) of the Real Estate Agents Act 2008 modifying the determination of the Committee as set out above at paragraph 5 with the consent of the parties pursuant to a settlement reached between them pursuant to s.93(1)(b).

[10] Accordingly, the Tribunal order:

The decision of the Committee is modified to reflect the facts set out in paragraph 5 above;

and will now record

“That in all the circumstances of this case Barfoot & Thompson was obliged to retain the deposit undispersed in its trust account and that this is not, and cannot, amount to unsatisfactory conduct or misconduct by Mr Fan, the second respondent. In all other respects the Committee’s decision is confirmed”.

DATED at Auckland this 25th day of September 2015

Ms K Davenport QC
Chairperson

N Dangen
Member

G Denley
Member