

**BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

[2015] NZREADT 76

READT 098/14

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

**BETWEEN** **AFFILIATED BUSINESS CONSULTANTS LTD**

Appellant

**AND** **REAL ESTATE AGENTS AUTHORITY (CAC20005 & 304)**

First respondent

**AND** **MARTIN AND LISA DAVENPORT**

Second respondents

**MEMBERS OF TRIBUNAL**

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

**HEARD** at WELLINGTON on 29 October 2015

**DATE OF THIS DECISION RECORDING SETTLEMENT** 5 November 2015

**APPEARANCES**

Mr J Waymouth, counsel for appellant  
Ms N E Copeland, counsel for the Authority  
Mr M and Mrs L Davenport on their own behalf

**DECISION RECORDING SETTLEMENT**

[1] The appellant real estate agency, a licensed company agent, appeals a 24 February 2014 finding of Complaints Assessment Committee No. 20005 that it had engaged in unsatisfactory conduct in the course of the sale of a business at Porirua known as "Davenport Jewellers". In a 23 October 2014 decision of Committee 304 the appellant was ordered to refund commission of \$20,240 to the second respondents (Mr and Mrs M Davenport) and to pay those complainants' legal costs of \$2,990, and it was also censured.

[2] The evidence on appeal to us was fully covered on 29 October 2015. Preceding that were detailed briefs of evidence-in-chief and submissions from the parties. At the point when final oral submissions were about to be covered before us, we suggested that there were avenues for settlement of this dispute. To the credit of the parties, they forthwith pursued those avenues and achieved resolution between themselves subject to our comment and approval.

[3] The parties are to be commended for agreeing to our suggestion, midway into the appeal hearing, that they proceed with this matter as a settlement conference in terms of general principles of restorative justice. They are to be congratulated for achieving a settlement suitable to all and thereby disposing of these issues in a manner which will be kept confidential to them as to detail.

[4] All parties have signed a settlement agreement dated 29 October 2015 and we have also all signed the same to show our endorsement of the resolution achieved by the parties.

[5] For present purposes, we simply record the following:

- [a] The Committee's finding of unsatisfactory conduct by the appellant is upheld;
- [b] The Committee's various penalty orders regarding monetary payments are modified by the terms of the said confidential settlement agreement;
- [c] The Committee's order for censure of the appellant agency is revoked.

[6] We also record and order that the terms of the said confidential settlement agreement are in full and final settlement of all issues whatsoever arising from the sale on 16 December 2011 of the said business of Davenport Jewellers to "*Paul James Stark and/or nominee*". In fact the purchase of that business sale was settled by the said Mr Stark and a Ms Rebecca Williamson.

[7] We observe that this case was yet another one where two agencies felt entitled to commission from the one sale transaction. Rule 9.11 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009 has been replaced by Rule 9.10 of the 2012 Rules which, a little more simply reads:

*"A licensee must explain to a prospective client that if he or she enters into or has already entered into other agency agreements, he or she could be liable to pay full commission to more than 1 agent in the event that a transaction is concluded."*

[8] It concerns us that, in the course of busy commercial life, some agents seek to place glosses and restrictions on the meaning of that Rule. We emphasise that it is rather wide-reaching. It means what it says.

[9] The only way for a licensee to be protected from complaint is that, on every occasion when a vendor signs an agency for a property (or business), that vendor must be warned about the possibility of double commission if that vendor enters into, or has entered into, any other agency agreement with anyone else. That is a very broad requirement and must be carefully complied with.

[10] There is no right of appeal from this consent decision. These proceedings are now at an end subject to enforcement of the terms of settlement.

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Judge P F Barber  
Chairperson

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Mr J Gaukrodger  
Member

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Ms N Dangen  
Member