

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2016] NZREADT 12

READT 062/14

IN THE MATTER OF charges laid under s.91 of the
Real Estate Agents Act 2008

BY **COMPLAINTS ASSESSMENT
COMMITTEE (per CAC 306)**

Prosecutor

AGAINST **ZHUO ZHOU**

First defendant

AND **SHAOWEI SHE**

Second defendant

MEMBERS OF TRIBUNAL

Judge P F Barber - Chairperson

Ms N Dangen - Member

Ms C Sandelin - Member

HEARD at AUCKLAND on penalty on 25 November 2015

DATE OF OUR SUBSTANTIVE DECISION HEREIN 10 July 2015 [2015]
NZREADT 51

DATE OF THIS PENALTY DECISION 11 February 2016

APPEARANCES

Ms K H Lawson-Bradshaw, counsel for the prosecution

Mr H Laubscher, counsel for Mr Zhou

Mr S She on his own behalf

Mr A Deng assisted as interpreter of Mandarin

PENALTY DECISION OF THE TRIBUNAL

[1] As we explained in some detail in our 10 July 2015 substantive decision herein, detailed amended charges were laid against both defendants on 19 December 2014. Mr Zhou pleaded guilty to the three charges against him of disgraceful conduct. Mr She defended the three charges against him and we found him guilty on one charge of misconduct (charge 4 set out below) and on one charge of unsatisfactory conduct.

[2] From at least 19 December 2014 both those defendants have had their licences as real estate salespersons suspended. Some aspects of the substantive case were rather involved and we have covered them in much detail in our said substantive decision but, for present purposes, we set out some of our findings under the heading of "Outcome" namely:

“[48] We detected quite some hostility between Messrs Zhou and She at this stage. It is difficult to know whom to believe although we consider that Ms Wei and Mr Dong in particular and, probably, Ms Jang are credible witnesses. We do not accept the theory that Mr Dong was a dummy buyer of 27 Arran Road for Ms Wei from the outset.

[49] As we have covered above, Mr Zhou admits charges 1 to 3 above inclusive. We find charge 4 proved against Mr She on the balance of probability but accept he was pressured into that offending by Mr Zhou in relation to 34 Diana Drive. We dismiss charge 5 and its alternative charge 6 but with regard to the particulars of those charges we find Mr She guilty of unsatisfactory conduct in that his wife is the registered purchaser of 27 Arran Road and ss.134-137 have not been complied with.”

The Charges

[3] Because the facts are somewhat involved but basically set out in the charges, we now set out the opening paragraphs of our substantive decision herein as follows:

“ [1] This is a prosecution against two licensees, Messrs Z Zhou and S She, in which particulars for each charge (set out below) not only cover the detailed allegations against each defendant but also the factual structure to quite some extent. At material times Mr She worked as a salesperson at the Glenfield branch of Barfoot & Thompson Ltd and Mr Zhou also worked at that branch as a sales associate to Mr She.

[2] Mr Zhou has pleaded guilty to the first three charges. There are six charges reading as follows (being an amended set of charges issued on 19 December 2014):

“Following a complaint by Barfoot & Thompson, Complaints Assessment Committee 306 (Committee) charges Zhou (Vincent) Zhou and Shaowei (Victor) She (defendants), as follows:

Charge 1 – Disgraceful conduct of Zhou Zhou

The Committee charges Zhou Zhou with misconduct under s.73(a) of the Real Estate Agents Act 2008 (Act), in that his conduct would reasonably be regarded by agents of good standing, or reasonable members of the public, as disgraceful.

- i. In the period September 2013 to December 2013 Mr Zhou created 10 rental appraisal letters for 10 properties knowing that they were false. These properties were:*
 - a. 87 Salamanca Road, Sunnynook, Auckland*
 - b. 134 East Coast Road, Milford, Auckland;*
 - c. 3 Julia Place, Totara Vale, Auckland;*
 - d. 2 Springsdale Place, New Lynn, Auckland;*
 - e. 3 Valley View Road, Glenfield, Auckland;*

- f. 92 Eskdale Road; Birkdale, Auckland;
 - g. 5 Eagleson Street, Torbay, Auckland;
 - h. 34 Diana Drive, Glenfield, Auckland;
 - i. 36 Diana Drive, Glenfield, Auckland; and
 - j. 3 Edwards Avenue, Henderson, Auckland.
- ii. Mr Zhou used the 10 rental appraisal letters, knowing they were false, by presenting them to the Bank of New Zealand.

Charge 2 – Disgraceful conduct of Mr Zhou

The Committee further charges Mr Zhou with misconduct under s.73(a) of the Act, in that his conduct relating to the purchase of 34 Diana Drive, Glenfield, Auckland (34 Diana Drive) would reasonably be regarded by agents of good standing, or reasonable members of the public, as disgraceful.

Mr Zhou knowingly assisted with the use of a forged signature on a sale and purchase agreement for 34 Diana Drive.

Charge 3 – Wilful or reckless breach of the Act by Mr Zhou

The Committee charges Mr Zhou with misconduct under s.73(c)(i) in relation to his purchase of 34 Diana Drive:

- i. On 4 July 2013, Mr Zhou's wife (Woori Jang) was the named purchaser on the sale and purchase agreement for 34 Diana Drive. Her Signature was forged by the wife of Mr She (Qizhe Wei), with Mr Zhou's knowledge.
- ii. Mr Zhou received a share of the commission paid by the vendor to Mr She for introducing the buyer (Woori Jang).
- iii. Mr Zhou became the registered owner of 34 Diana Drive.
- iv. Despite acting in the transaction and receiving a share of the commission paid by the vendors, Mr Zhou did not disclose to the vendors that his wife was purchasing 34 Diana Drive or that he was to be the registered owner, accordingly he was in breach of sections 134-137 of the Act.

Charge 4 – Disgraceful conduct of Mr She

The Committee charges Mr She with misconduct under s.73(a) of the Act, in that his conduct relating to the purchase of 34 Diana Drive would reasonably be regarded by agents of good standing, or reasonable members of the public, as disgraceful:

- i. Mr She introduced a buyer (Qizhe Wei, posing as Woori Jang) for 34 Diana Drive.
- ii. On 4 July 2013, Woori Jang was the named purchaser in the sale and purchase agreement for 34 Diana Drive.

- iii. *Woori Jang was the wife of Mr She's associate Mr Zhou.*
- iv. *The signature of Woori Jang on the sale and purchase agreement was forged by the wife of Mr She (Qizhe Wei).*
- v. *Mr She knowingly assisted with the use of the forged signature on the sale and purchase agreement.*
- vi. *Mr She also received a share of the commission payable by the vendors, by way of a referral fee for introducing the buyer, when he knew that the buyer was the wife of his associate Mr Zhou, and that Mr Zhou was to be the registered owner of 34 Diana Drive and he did not disclose that fact to the vendors or the listing agents.*
- vii. *Mr She took no steps to ensure that the disclosure required by Mr Zhou under ss 134-137 of the Act was made."*

Charge 5 – Disgraceful conduct of Mr She

*The Committee charges Mr She with misconduct under s 73(a) of the Act, in that his conduct relating to the purchase of 27 Arran Road, Browns Bay, Auckland (**27 Arran Road**) would reasonably be regarded by agents of good standing, or reasonable members of the public, as disgraceful:*

- i. *On 21 July 2013, Mr She attended the auction of 27 Arran Road with Zhaoing Dong, who was his tenant at the time.*
- ii. *Mr She intended to purchase 27 Arran Road as an investment property.*
- iii. *In order to obtain a commission, Mr She had Mr Dong buy 27 Arran Road at auction and sign the sale and purchase agreement.*
- iv. *Mr She later paid half the purchase price and had his wife's name placed on the certificate of title (Qizhe Wei).*
- v. *Mr She received commission from the listing agents (Harcourts) for introducing Mr Dong.*
- vi. *Mr She did not disclose to the vendors or the listing agents that his wife was the ultimate purchaser and owner of 27 Arran Road, thus breaching ss 134-137 of the Act.*

Charge 6 – Wilful or reckless breach of the Act by Mr She (alternative to charge 5)

In the alternative, the Committee charges Mr She with misconduct under s 73(c)(i), (ii) and (iii) in relation to his wife's purchase of 27 Arran Road and relies on the particulars described above in charge 5." "

General Principles on Penalty

[4] It is well established that penalty decisions of disciplinary tribunals should emphasise the maintenance of high standards and the protection of the public

through specific and general deterrence. While this may result in orders having a punitive effect, this is not their purpose - *Z v CAC* [2009] 1 NZLR 1; *CAC v Walker* [2011] NZREADT 4.

[5] The Real Estate Agents Act 2008 was introduced to better protect the interests of consumers in respect of real estate transactions. A key means of achieving that purpose was the creation of a wide range of discretionary orders available on findings of unsatisfactory conduct or misconduct against a licensee.

The Stance of the Prosecution

[6] The following is an edited version of some of the typewritten submissions we received from Ms Lawson-Bradshaw for the prosecution.

Mr Zhou

[7] Mr Zhou pleaded guilty to three charges of misconduct including:

- [a] Disgraceful conduct for creating 10 false rental appraisal letters;
- [b] Disgraceful conduct for knowingly assisting in the use of a forged signature on a sale and purchase agreement for 34 Diana Drive, Auckland; and
- [c] Wilful or reckless breach of the Act by becoming the registered owner of 34 Diana Drive, acting in the transaction as licensee, and receiving a share of the commission without disclosing this to the vendors, thus breaching ss 134-137 of the Act.

[8] Counsel for the Authority submits that, by creating false rental appraisals and assisting in forgery, Mr Zhou has behaved dishonestly. She puts it that, regardless of his motivation, his conduct was so disgraceful that the penalty imposed by us must be set at a level so as to deter Mr Zhou and other licensees from engaging in similar conduct; it must be made clear that the highest standards of honesty are required of licensees and that licensees who fail to meet those standards will be held accountable.

[9] It is also submitted that Mr Zhou was dishonest on a number of occasions and in more than one way. He committed fraud on 10 separate occasions by creating the false rental appraisals. One of these appraisals was even for a property that he became the registered proprietor for, after he assisted with his business partner's wife forging the signature of his wife. He then intentionally did not disclose to the vendors that he was going to become the registered proprietor and received a commission for the sale.

[10] Mr Zhou produced false rental appraisals on his computer and forged the signature of Wayne Song, a property manager at Barfoot & Thompson. The rental appraisals were then provided to a contact at BNZ, Sean Ban.

[11] When first interviewed by an investigator for the Authority, Mr Zhou lied and said that he had obtained the appraisals from someone else. He did not initially admit that he had produced the appraisals himself. It was not until his second interview that he admitted his involvement to the Authority's investigator.

[12] In his second interview with the Authority, Mr Zhou stated that he had produced the false appraisals because, generally in his view, Barfoot & Thompson rental appraisal amounts were too low and property managers took too long to produce them. He claimed that Sean Ban had pressured him to provide the appraisals quickly. Mr Zhou has stated in evidence that except for two private sales, the properties had been sold at auctions where the purchasers already had their finance approved. He has also said he thought he was just helping out a friend i.e. Mr Sean Ban.

[13] Ms Lawson-Bradshaw submits that regardless of Mr Zhou's explanation, his behaviour was fraudulent and inexcusable.

34 Diana Road

[14] As well as the rental appraisal fraud, Mr Zhou assisted Amanda Wei, the wife of his colleague Mr She, forge the signature of his (Mr Zhou's) wife on the sale and purchase agreement of 34 Diana Road and facilitated the use of that agreement document. We found that he was the instigator of this forgery and that he had pressured Mr She to take part. We take this finding into account when determining the appropriate penalty for Mr Zhou.

[15] Mr Zhou has also admitted that he intended all along to become the registered owner of 34 Diana Road, and he deliberately had his wife's name put on the sale and purchase agreement so he could claim a commission for the sale. Mr Zhou intentionally did not disclose he was the ultimate purchaser, nor did he ever intend to disclose this to the vendors. This was a wilful breach of the rules.

[16] Ms Lawson-Bradshaw submits that Mr Zhou's actions in relation to the purchase of 34 Diana Road, demonstrate deliberate and premeditated dishonesty. She puts it that, taking into account Mr Zhou's behaviour with respect both to 34 Diana Road and the false rental appraisals, he has exhibited a high degree of dishonesty showing that he is not the type of person who can be trusted to deal with other people's property.

Recommended Penalty

[17] In the circumstances, Ms Lawson-Bradshaw submitted for the prosecuting Authority that no order less than cancellation of Mr Zhou's licence would adequately reflect the purpose of the Act, namely, to promote and protect the interests of consumers in respect of transactions that relate to real estate and to promote public confidence in the performance of real estate agency work. It is put that we may also wish to consider imposing a significant fine to denounce and deter this type of conduct by others in the industry.

Mitigation

[18] Ms Lawson-Bradshaw notes that Mr Zhou, to his credit, did admit the allegations in his second interview with the Authority and proceeded to admit the charges shortly after they were laid, but as stated above, he did initially lie to the Authority when first questioned. Counsel also noted that Mr Zhou then provided a statement acknowledging his wrong doing and seeking to assist by providing information about his co-defendant, Mr She.

[19] However, Ms Lawson-Bradshaw submits that even if we had found Mr Zhou to be a helpful and credible witness (which we did not), the prosecution would still submit that cancellation was the only appropriate penalty in the circumstances and Mr Zhou's dishonesty was too great for any other penalty to be justified.

[20] Counsel accepts that we need to weigh any mitigation points by Mr Zhou, but submits that should only impact what level of fine is imposed and there is nothing in mitigation to reduce the penalty from cancellation.

Mr She

[21] Mr She was found guilty of one charge of misconduct for aiding and abetting Mr Zhou when purchasing 34 Diana Road and having Mr She's wife forge the signature of Mr Zhou's wife on the said agreement for sale and purchase and facilitating the use of that document. Mr She was also found to have engaged in unsatisfactory conduct in relation to 27 Arran Road in that he failed to disclose that his wife had become the registered proprietor.

Misconduct

[22] In relation to the misconduct finding, we agreed with the prosecution submission that Mr She not only took no steps to ensure Mr Zhou made this disclosure required by ss 134-137, but he actively participated in Mr Zhou's dishonest conduct in helping to conceal that he was the ultimate intended purchaser. Accordingly, we stated: "*We find that Mr She acted in a way that would be regarded by agents of good standing, or reasonable members of the public, as disgraceful*". We accepted that Mr She was "*pressured*" into this offending by Mr Zhou.

[23] Without going behind this finding, the prosecution notes that Mr She was effectively the manager of Mr Zhou and submits that any pressure exerted on him by Mr Zhou should be seen in this context and it is not a case of pressure being exerted by a senior person in a position of power.

[24] Ms Lawson-Bradshaw adds that, even though we found that Mr She was not the instigator of the signature forgery, he still chose to be involved and was actively complicit with the forgery. She submits for the Authority that as real estate agents deal with others' properties, they must be able to be trusted to do so legally, honestly, and in accordance with instructions; and that Mr She's conduct shows that he cannot be trusted to deal with another's property honestly; and demonstrates serious dishonesty and, as such, requires a strong response from us.

[25] Ms Lawson-Bradshaw stresses that, but for our mitigating findings including that Mr She was pressured, the prosecution would be seeking for his licence to be cancelled. However, in light of the findings the Authority accepts that we may consider it appropriate that his licence be (merely) suspended but, in the circumstances, submits that the period of suspension should be at, or at least near, the top end available under s 110(2)(c) of the Act.

[26] It is also submitted for the Authority that, as in the case of Mr Zhou, we should also consider that a fine is appropriate in order to denounce Mr She's conduct.

Unsatisfactory Conduct

[27] In respect of our unsatisfactory conduct finding against Mr She, counsel noted that breach at this level would normally attract a fine; refer *CAC v Clark & Clark* NZREADT 88 where we found that the licensees had technically, but not deliberately, breached s 136 of the Act but we, nevertheless, imposed a \$3,000 fine on each defendant.

[28] Ms Lawson-Bradshaw also put it that since Mr She has also been found guilty of a more serious charge of misconduct, while the unsatisfactory conduct finding should be taken into account for the final penalty order, any effect will be limited.

The Submissions on Penalty from Counsel for Mr Zhou

[29] Just as we are appreciative of the considered submissions from Ms Lawson-Bradshaw for the prosecution so we appreciated the thoughtful submissions from Mr Laubscher. To some extent his client, Mr Zhou, seemed to want to reargue some of our findings and that is not acceptable when dealing with penalty.

[30] With regard to Charge 1 against Mr Zhou, he has admitted from the outset disgraceful conduct on his part for creating 10 rental appraisal letters for ten properties over the period September 2013 to December 2013 knowing that they were forged.

[31] With regard to Charge 2 he admits disgraceful conduct by knowingly having assisted with the use of a forged signature on a sale and purchase agreement for a property at 34 Diana Drive, Glenfield, Auckland.

[32] In terms of Charge 3 against him for misconduct, he accepts that to his knowledge the contract for the purchase of 34 Diana Drive was concluded in his absent wife's name; that Mr She's wife signed that contract misrepresenting herself as his wife; and with his knowledge Mr Zhou provided the deposit cheque and handed it to Mr She; so that he knowingly assisted with the forgery by Mr She's wife.

[33] It is submitted for him that he did not take the leading role in that forgery nor did he pressure Mr She into that offending. We found at paragraph [49] of our substantive decision that Mr She was pressured by Mr Zhou into the offending related to 34 Diana Drive even though Mr Zhou worked as Mr She's assistant.

[34] There was much reference to the evidence that can be taken or inferred in favour of Mr Zhou from a video recording of the auction of 34 Diana Drive which, it is now put, was not available at the time of the substantive hearing before us. Whatever influences and deductions can be taken from that do not affect our overall view of the sentences required by justice against each defendant.

[35] Over about three months Mr Zhou produced 10 fictitious rental appraisals on which he forged the signature of a particular property manager at a prominent real estate agency. It is put that he volunteered those rental appraisals at the request of a mortgage manager at a bank. Apparently these appraisals were provided post purchase and after a purchaser had obtained bank finance and it seems that the availability of those appraisals simply supported finance decisions purposely made by that bank mortgage manager. It also seems that providing those rental appraisals did not provide a financial benefit to Mr Zhou in any way.

[36] Mr Laubscher seemed to be submitting that, therefore, that conduct of Mr Zhou did not involve real estate agency work as the appraisals did not bring about a transaction. We think that to be very arguable but the issue before us was whether that conduct would be regarded by agents of good standing, or reasonable members of the public, as disgraceful; and we found that to be so. In any case, Mr Zhou pleaded guilty to that.

[37] With regard to the offence of Mr Zhou knowingly assisting with the use of the forged signature, Mr Laubscher seemed to accept that to be reprehensible but, in all the circumstances of this case, to have caused no loss or risk of loss to the vendor of 34 Diana Drive but (he puts it) rather, by competitive bidding, Mr Zhou must have driven up the price at auction. Mr Laubscher emphasised that Mr Zhou could have attended that auction in his private capacity and competed in the auction and there was no incentive for him to purchase it in his wife's name rather than his own. Mr Laubscher stressed that Mr Zhou's method of purchasing the property was incredibly dumb as he could have had Mr She simply disclose to the auctioneer or vendor that Mr Zhou was an interested buyer and was an associate of Mr She who would then have been entitled to commission. Mr Laubscher put it:

"45.2 This convoluted plot served no purpose other than to relieve Mr She from his self-created obligation under s 136 to disclose to the vendor that a person related to him, namely Mr Zhou, may benefit financially from the transaction.

45.3 In retrospect, it was Mr She who created this obligation on the day before the auction by performing real estate agency work through:

- (a) Contacting Mr Mitchell and informing him that he had an interested buyer (which was true);*
- (b) Negotiating a 20% referral commission with Mr Mitchell by email; and*
- (c) Thereafter taking his wife (misrepresenting her to be his interested buyer) through the open home.*

45.4 Having created this dilemma the only way out (other than disclosing Mr Zhou's interest) was to persist with the misrepresentation that the buyer was not Mr Zhou, but an unrelated person.

45.5 The only benefit derived from this elaborate scheme was the accreditation of the sale to Mr She and a share in Barfoot & Thompson's 20% referral commission. It should be borne in mind that the commission was received by Barfoot & Thompson; a portion of that commission was then paid out to the agent (Mr She), who in turn paid a portion to his sales associate, Mr Zhou. Mr Zhou's uncontested evidence was that he received \$1,188.15 in commission from Mr She."

[38] We also set out the following from Mr Laubscher's submissions for Mr Zhou:

"45.7 The net result of this whole elaborate scheme was therefore that a sale was credited to Mr She; he retained an amount of \$668.33 as commission, while Mr Zhou achieved effectively a discount of about \$831.71 on a purchase price of \$888,500.00.

45.8 *The foolishness of the scheme is demonstrated by the fact that if everything had been done by the book, Mr She would still have been credited with the sale and would still have received the referral commission.”*

[39] With regard to the forgery charge referred to above and covered by us in some detail in our said substantive decision, Mr Laubscher emphasises that Mr Zhou pleaded guilty to that and there was no loss or potential loss to the vendor or any other participant at the auction.

[40] Mr Laubscher generally covered Mr Zhou’s background as a New Zealand citizen who has immigrated here from China. He has a Bachelor’s degree in Business Studies and is studying further and is married with one child. It is put that he is a person of good character and some references have been tendered on his behalf. It is put that he has cooperated with the Authority from the outset and is genuinely remorseful and voluntarily suspended his licence as an estate agent at the end of February 2014. Also, he has been willing to repay the portion of the commission he received from Mr She over 34 Diana Road and, of course, he accepted responsibility for his conduct from the outset and pleaded guilty to all the charges laid against him. Mr Laubscher submits that there has been no financial loss caused by Mr Zhou who is unlikely to present any ongoing risk to consumers in the future.

[41] Mr Laubscher then took us through quite a number of semi relevant cases in terms of penalty with an analysis of their facts and a comparison to the facts of the present charges against Mr Zhou. Of course we find that helpful but, as we have often said, we prefer to focus on the detail of the facts of the present case.

[42] Of course, inter alia, Mr Laubscher submits that:

“71. Recognising that the purpose of disciplinary sanctions is protective rather than punitive and applying the least restrictive outcome principle the least punitive order which is consistent with the protection of the public should be made.”

[43] He noted that, should we order cancellation of Mr Zhou’s licence, he will be deprived of his livelihood and Mr Laubscher submits that a period of suspension of Mr Zhou’s licence is sufficient to reflect the serious nature of the said charges while recognising the mitigating factors and the nature of the wrongdoing. He then put it:

“75.1 Mr Zhou was a relatively inexperienced real estate agent at the time. He had worked exactly nine weeks as the associate salesperson for Mr She when the auction of 34 Diana Drive took place and between 4 and 7 months when he provided the false rental appraisals to Mr Ban;

75.2 Mr Zhou’s conduct was not motivated by financial gain;

75.3 Mr Zhou’s conduct was not aimed in any way at depriving or undermining the interests of any client, the vendor of 34 Diana Drive or any member of the public;

75.4 Mr Zhou’s conduct did not cause financial loss or risk of loss to any client, the vendor of 34 Diana Drive, Bank of New Zealand or members of the public;

75.5 *Mr Zhou has learnt a very expensive lesson – to date he has been out of the real estate business for 20 months. His co-operation with the investigation, as well as his remorse and acceptance of responsibility make it most unlikely that he would repeat his foolish mistakes.*

75.6 *Considering those of the Tribunal’s other decisions which concern the falsifying of documents, parity would require an order of less than cancellation.”*

[44] Mr Laubscher then submitted that a suspension of nine months from now would adequately address Mr Zhou’s offending coupled, perhaps, with a modest fine.

[45] In final oral submissions Mr Laubscher helpfully covered his above submissions and put it that Mr She was the leader of the offending by the two defendants. He again covered that the scheme between the defendants to enable Mr Zhou to purchase 34 Diana Drive was incredibly foolish and unnecessary and, indeed, pointless. He again covered the above mitigating factors such as Mr Zhou’s early cooperation, his contrition and remorse.

The Submissions from Mr She (through Mr Deng as an Interpreter of Mandarin into English)

[46] Mr She puts it that he was just a pupil of Mr Zhou with regard to the forgery charge relating to Mr Zhou’s eventual purchase of 34 Diana Drive by the use of a forged signature from Mr She’s wife.

[47] Mr She still maintains that he thought that a woman at the auction with Mr Zhou was the intended purchaser of 34 Diana Drive but she had absconded. Therefore, he facilitated that his wife sign the purchase contract after the auction because he and Mr Zhou were then close friends. He had been sure that the other woman was a buyer organised by Mr Zhou for 34 Diana Drive, but he accepted that it now seems that Mr Zhou did not know that other woman.

[48] Mr She then put it that the said video of the auction seemed to show that Mr She was just the pupil of Mr Zhou but, in fact, Mr Zhou was his assistant and that was why, after the auction, he required Mr Zhou to bring his buyer to him and sign the purchase agreement. That had led to Mr Zhou involving Mr She’s wife to do that.

[49] Mr She put it that the whole forgery façade was created by Mr Zhou but Mr She admits that he saw what was happening and made a big mistake by not stopping it from happening. He said he was simply doing his daily work as an agent and he did not know that Mr Zhou wished to buy the property 34 Diana Drive for himself. He stressed to us that he, Mr She, had made a “*big mistake*” and he felt he was helping his friends in terms of Chinese culture or ethos and at the time it seemed a small thing to do but it led to a “*big mistake*” as Mr She puts it. He says he deeply regrets “*the big outcome from such a small mistake*”.

Discussion and Outcome

[50] In our summary of the submissions for the parties set out above, standard principles of sentencing have been covered including factors such as aggravating and mitigating features including co-operation and remorse. We accept, of course, that the principal purpose of the Act is to promote and protect the interests of the performance of real estate agency work. One of the ways in which the Act achieves

its purpose is by providing accountability through an independent, transparent, and effective disciplinary process.

[51] Professional standards must be maintained. The aspects of deterrence and denunciation must be taken into account. It is settled law that a penalty in a professional disciplinary case is primarily about the maintenance of standards and the protection of the public, but there can be an element of punishment. Disciplinary proceedings inevitably involve the issue of deterrence, and penalties are designed in part to deter both the offender and others in the profession from offending in a like manner in the future. Having said all that, it is often appropriate to consider rehabilitation of the professional, and that may involve requiring a licensee to undergo training or education; but that is not an appropriate approach in this case.

[52] Generally speaking, orders under s 93 must be proportionate to the offending and to the range of available orders. Similarly, with regard to orders made by us under s 110 of the Act.

[53] We are conscious of testimonials tendered for Mr Zhou.

[54] We are in no doubt that Mr She was Mr Zhou's "boss" as they both used that term, and that Mr Zhou was led by Mr She in terms of the offending; although the said series of 10 false rental appraisals were entirely the business and offending of Mr Zhou.

[55] The DVD recording was filed by Mr Zhou on 28 October 2015 and was not part of the evidence at the substantive hearing before us.

[56] If counsel for Mr Zhou is submitting that he has not received natural justice in terms of procedures, such a review concept is not relevant to penalty.

[57] Simply put, the type of offending we have covered in our substantive decision and above in this penalty decision, is appalling and in our view strikes at the core of the standards of trust needed from real estate agents. Accordingly, we do not think that it particularly helps to analyse other cases of misconduct. The highest standards of honesty are fundamental in the real estate industry. The nature of the offending by each defendant as covered above involves serious pre-meditated dishonesty from which consumers must be protected. The defendants' offending involved concerning fraud. Other licensees must be deterred from engaging in similar conduct.

[58] We are all firmly of the view that the lack of trust, honesty, and character in each defendant as we have covered in our substantive decision and herein are such that they should not remain part of the real estate industry in any way. Their conduct falls far short of the professional integrity needed by licensed real estate agents. We have particularly considered the factors that Mr Zhou has co-operated with the prosecution and that both defendants are remorseful.

[59] Accordingly, we hereby order that the licence of each of them is forthwith cancelled.

[60] 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

Ms N Dangen
Member

Ms C Sandelin
Member