

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2018] NZREADT 65

READT 023/18

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| IN THE MATTER OF | An appeal under section 111 of the Real Estate Agents Act 2008 |
| BETWEEN | JENNA RAHIM Appellant |
| AND | THE REAL ESTATE AGENTS AUTHORITY (CAC 416) First Respondent |
| AND | KEITH DOWDLE, JOHN STEMPA, and MAXTON EVES Second Respondents |
| Hearing: | 3 October 2018, at Auckland |
| Tribunal: | Hon P J Andrews, Chairperson Ms C Sandelin, Member Mr N O'Connor, Member |
| Appearances: | Mrs Rahim (Mr Rahim attending) Ms J Trezise, on behalf of the Authority Mr Eves, also representing Mr Dowdle and Mr Stempa |
| Date of Decision: | 25 October 2018 |

DECISION OF THE TRIBUNAL

Introduction

[1] Mrs Rahim has appealed pursuant to s 111 of the Real Estate Agents Act 2008 (“the Act”) against the decision of Complaints Assessment Committee 416 (“the Committee”), dated 13 April 2018, to take no further action on her complaint against the second respondents, Mr Dowdle, Mr Stempa, and Mr Eves.

Factual background

[2] At the relevant time, Mr Dowdle, Mr Stempa, and Mr Eves were engaged at Custom Residential Ltd (“the Agency”). Mr Stempa was the listing agent for a property at Sandringham, Auckland (“the property”), which Mr and Mrs Rahim bought at auction on 15 September 2013. The property was one of four units on a cross-lease title, with a shared driveway.

[3] Printed and on-line marketing material for the property comprised photographs of the interior and exterior of the house, a brief description of the property, and icons indicating three bedrooms, one bathroom, parking for one car in a garage, and parking for one car not in a garage.

[4] Mr and Mrs Rahim first viewed the property at an open home in early September 2013. Mr Stempa gave Mrs Rahim a marketing brochure for the property and a copy of the Certificate of Title (“the title”) and the Memorandum of Lease (“the lease”). On 9 September 2013, Mr Stempa sent Mrs Rahim a copy of the LIM report for the property, and information as to the auction process. The same day, Mrs Rahim advised Mr Stempa that “I have everything now with my lawyer”. Mrs Rahim had a second, private, viewing with Mr Stempa on 12 September 2013. There is a dispute as to what oral representations Mr Stempa made as to the property.

[5] Mr Dowdle was the auctioneer at the auction on 15 September 2013. There is a dispute as to what occurred. Bidding opened at \$550,000 and the auction was paused at \$620,000, at which time Mrs Rahim was the highest bidder. After discussions between Mr Dowdle, Mr Stempa, and Mr and Mrs Rahim, their bid of \$635,000 was accepted by the vendor, and Mr and Mrs Rahim bought the property.

Complaint to the Agency

[6] On 18 May 2017, Mrs Rahim sent a letter of complaint to Mr Dowdle. She said that over the period since she and her husband bought the property, and having been put in a confrontational position with their neighbours, they had found that information they relied on when buying the property was false and misleading. She said that:

- [a] They discussed the difficulty of parking, and Mr Stempa told them that the property had two legal carparks, whereas they have now learned that they only have one legal carpark (in the garage), and the rest of the driveway is common area. Their neighbour in the adjoining unit has complained that the commercial vehicle they have parked outside their garage impedes and obstructs access within the common area.
- [b] They asked Mr Stempa what the situation was regarding painting of the property, and he told them that they could paint their side of the unit any colour they wished. They have since learned that this is not the case.
- [c] At the auction, when she was the highest bidder at \$620,000, Mr Dowdle told them that the reserve was \$650,000 and they would have to increase their bid to that figure. As a result they increased their bid to \$635,000 in order to secure the property. They have since discovered that the true reserve may have been much lower than that. Mrs Rahim also said that Mr Dowdle asked Mr Rahim before the auction what their budget was and they “naively told him it was up to \$650K.

[7] Mrs Rahim’s complaint was dealt with by Mr Eves.

Complaint to the Authority

[8] Mrs Rahim was not satisfied with the Agency’s response to her complaint, and lodged a complaint with the Authority, in the same terms as set out above. The Committee decided to inquire into the complaint. While the complaint referred to Mr Stempa and Mr Dowdle, the Committee decided in the course of the inquiry to extend

the inquiry into his dealing with Mrs Rahim's complaint to the Agency, pursuant to s 78(b) of the Act.

The title and the lease

[9] It is appropriate at this point to refer to the title and the relevant provisions of the lease.

Certificate of Title

[10] The property is one of a complex of four units. The composite title specifies the property as a leasehold estate, in which the property has a one-quarter share. The property is shown as Flat 4 (CT 63A/802), adjoining Flat 3 at the rear of the complex, on the Flat Plan of the complex. The two other units are single dwellings.

[11] The complex is shown as having a driveway (identified as a common area), leading from the street past Flats 1 and 2, then turning and providing a wider driveway and turnaround area outside Flats 3 and 4. An area outside Flat 4 is marked "E" on the title.¹

Memorandum of lease

[12] As particularly relevant to this matter, the lease includes the following provisions:

[a] Parking

31. That the Lessors other than the Lessee shall not during the term hereby created be entitled to use occupy or enjoy that part of the said land adjacent to the flat shown marked "E" on Deposited Plan No. 112193 (hereinafter called "the said area") to the intent that the foregoing restrictive covenant shall at all times during the term hereof remain appurtenant to the estate and interest of the said Lessee in the flat for all purposes connected with the use occupation and enjoyment thereof PROVIDED HOWEVER that the Lessors shall be entitled to enter upon the said part of the land to the extent that may be necessary in order to effect repairs or maintenance to the said building or any services relating thereto and the Lessee shall at all times keep the said area in a neat and tidy condition and in good repair.

¹ The area outside Flat 3 is marked "D".

32. That the Lessors will not permit and allow any vehicles to be parked or left on that part of the land which is the common area so as to impede or obstruct the Lessee from the reasonable use and enjoyment of the common area.

[b] Painting

28 COLOUR SCHEME

That notwithstanding the provisions of Clause 27 hereof [which is headed "PROCEDURE FOR DECISIONS"], any exterior painting of the said building shall be carried out in such a colour scheme as is agreed upon by the Lessors but if agreement cannot be reached then the colour scheme shall be as near as is practicable to the existing colour scheme.

Appeal issues

[13] The Tribunal is required to consider whether the Committee was wrong to decide to take no further action on Mrs Rahim's complaints that:

- [a] Mr Stempa misled her by telling her that there were two "legal" car parks at the property;
- [b] Mr Stempa misled her by telling her that she and her husband could paint their side of the unit any colour they wished; and
- [c] Mr Dowdle and Mr Stempa misled her as to the vendor's reserve at the auction, and used confidential information as to the price she could pay for the property.

(a) Carparking

Evidence before the Committee

[14] Mrs Rahim's evidence was that she was concerned about off-street parking, as she and her husband had found it difficult to find parking when they attended an open home. She said they raised this with Mr Stempa and he told them that "we had two legal off street car parks". She said Mr Stempa also gave her the marketing brochure for the property which showed them they had two designated legal off street carparking spaces. She further said that in fact they only have one designated legal parking space, which is in the garage, and "all of the rest of the driveway is common area for everyone

on the cross lease section according to the flats plan”. Mrs Rahim said that the neighbours had made an issue about their parking their large commercial vehicle outside their garage, and claimed it made it difficult for them to reverse their own car.

[15] Mrs Rahim said that she and her husband believed what they were told, and even though they had had their solicitor check the lease pertaining to the cross-lease title, there were no red flags to cause them concern.

[16] Mr Stempa’s evidence was that he gave Mr and Mrs Rahim copies of the title and lease, and explained the cross-lease to them. He said that he explained that the property was cross-leased, the garden and house were their exclusive use areas, and the driveway and turnaround were part of the common area. He said that he never used the word “legal” in relation to the parking area in front of the property’s garage, whether orally or in the marketing material. He said that in his experience there is no infringement of the lease by parking in front of the garage, as long as the neighbour’s access is not impeded or obstructed. He also said that he repeated information given to him by the vendor, that both he and the neighbour parked a vehicle in front of their respective garages, and that it was common sense not to block the neighbour’s access to the turnaround area.

[17] Mr Stempa also said that Mr and Mrs Rahim had told him that they had shown the title and lease to their solicitors, before they bid at the auction.

Committee’s decision

[18] The Committee referred to the terms of cl 32 of the lease (set out at paragraph [12][a], above), and Mrs Rahim’s statement that they had parked a “large commercial vehicle” in front of the garage. The Committee considered that this may have impeded or obstructed the neighbour’s access to the common area.

[19] The Committee also referred to Mrs Rahim’s confirmation to Mr Stempa that she had received the lease and the title and that “everything was now with their lawyer”. It referred to Mrs Rahim’s statement that she had gone through the documents with her lawyer. It observed that title documents, in particular those

relating to cross-lease titles, are complex, and that the lease in this case contained a number of alterations and deletions.

[20] The Committee found that Mrs Rahim was given every opportunity to complete due diligence and seek legal advice, yet chose not to peruse each clause, or to familiarise herself with what was contained and required under the provisions of the cross-lease title. Accordingly, the Committee decided to take no further action on this element of Mrs Rahim's complaint.

Appeal submissions

[21] Mrs Rahim said that carparking was "the biggest issue in this whole ordeal". She submitted that the Committee's reasons for its decision did not address the fact that Mr Stempa and the Agency set out the listing details incorrectly, and sold the property to them, having led them to believe there were genuinely two carparks at the property rather than only one. She submitted that the fact that the Committee did not agree that this was misleading under the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 ("the Rules") was "troubling".

[22] Mrs Rahim submitted that a brochure and on-line listing showing there were two carparking spaces clearly inferred that there were two legal exclusive car parking spaces, and that this was misleading, irresponsible, and negligent. She submitted that when she and her husband questioned Mr Stempa about the carparking situation he happily advised them of the second carparking space in front of the garage – on which he was parking for the open homes and private viewings.

[23] She further submitted that Mr Stempa and the Agency had made a "huge assumption" that the property had two carparks. She submitted that they were required to obtain confirmation from the vendor, supported by evidence or expert advice, that the property was not subject to a defect – in this case, the fact that the property did not have two carparks – and had not done so.

[24] Regarding the Committee's reference to her having referred the title and lease to her solicitor, Mrs Rahim acknowledged that she and her husband had done due

diligence and provided the documents to her lawyer, but submitted that while a customer is expected to inquire into the risks regarding a property, undertake inspections, and seek advice, the licensee must not simply rely on “caveat emptor”. She submitted that that was what had happened in this case.

[25] Mrs Rahim further submitted that it could not be expected that her lawyer should check on the validity of the representations made by the Agency or agent. She submitted that the Agency failed to do its own due diligence in the first instance, resulting in false information being used to market and sell the property.

[26] Speaking for himself, Mr Stempa, and Mr Dowdle, Mr Eves referred to their statements made in the course of the Authority’s inquiry. In his response to Mrs Rahim’s complaint, Mr Stempa referred to cl 32 of the lease, and said that parking a car in front of the garage, that would not impede the neighbour, was possible under the terms of the lease. Mr Eves added at the hearing of the appeal that the lease does provide for a carpark outside the garage, and that Mr and Mrs Rahim accepted that they had in fact parked there for some three and a half years after buying the property.

[27] Ms Trezise submitted that Mrs Rahim’s reference to “defects”, and the requirement to obtain confirmation from the vendor that land is not subject to defects, was a reference to r 10.7 of the Rules, yet that Rule was not relevant in this case, as the inability to park in front of the garage of a property is not a hidden or underlying “defect”, or a risk of defect, as contemplated by r 10.7. She submitted that the most relevant Rule under which to consider the carparking issue is r 6.4, which provides that “a licensee must not mislead a customer or client, nor provide false information, nor withhold information that should by law or in fairness be provided”.

[28] Ms Trezise referred the Tribunal to the decision of his Honour Justice Heath in *Vosper v Real Estate Agents Authority*, in which his Honour discussed r 6.4 and said:²

... It seems self-evident that for a misrepresentation of the type to which r 6.4 refers to attract disciplinary sanctions, something more than an erroneous statement based on a genuine belief that a state of affairs exists should be required. ...

² *Vosper v Real Estate Agents Authority* [2017] NZHC 453, at paragraph [62].

[29] Ms Trezise submitted that it had not been established here that an “erroneous statement” was made in respect of the property’s carparking. She noted that Mr Stempa had maintained that he never described the property as having two “legal” carparks, but had relayed information provided by the vendor. This, in combination with the wording of cl 32 of the lease, satisfied him that the area in front of the property’s garage was available for parking, provided it did not cause an obstruction.

[30] Ms Trezise noted that the Committee had not specifically addressed the inclusion of the two carpark icons on the advertising material. She submitted that the Committee could have interpreted these as either representing the availability of carparks at the property, with the lease clarifying the scope of that availability, or as representing that the carpark in front of the garage was “legal” and “exclusive” but that the wording of clause 32 of the lease was sufficient to address or correct the representation.

[31] In this respect, she referred the Tribunal to the decision in *Lam v Real Estate Agents Authority (CAC 413)*, in which it found that a licensee had not misrepresented that a property had five carparks, when two of these were in front of vehicle accessways (and therefore infringing Road Transport Regulations).³ This was because the purchaser had conducted a detailed inspection of the property and been shown the location of the two carparks, and the licensee had not acted other than in good faith (having reflected instructions given to her by the vendor). In that case, the evidence indicated that the vendor had permitted a family member to occupy one of the carparks for many months without any infringement proceedings being taken.

[32] Ms Trezise submitted that in the present case, Mrs Rahim had personally inspected the property, and was shown the location of the relevant carpark. She also referred to Mr Stempa’s statement that he had explained that the driveway and turnaround areas were common areas. She submitted that when those matters are considered in their entirety, the Committee was entitled to conclude that Mr Stempa had not made a misleading representation.

³ *Lam v Real Estate Agents Authority (CAC 413)* [2018] NZREADT 43.

Discussion

[33] We are not persuaded that the Committee was wrong to find that Mr Stempa did not make a misleading representation that the property had two “legal” and “exclusive” carpark, either orally to Mr and Mrs Rahim, or by inference from the marketing material for the property.

[34] We accept Ms Trezise’s submission that this element of the complaint should not be considered under r 10.7. If there is one, rather than two, “legal” carpark on the property (and the Tribunal is not required to decide that point), that is not a “hidden or underlying defect” of the kind at which r 10.7 is directed. It is appropriate to consider Ms Rahim’s complaint as being an allegation that Mr Stempa gave her misleading information, in breach of r 6.4.

[35] On the factual dispute of what Mr Stempa said to Mr and Mrs Rahim, Mrs Rahim has not established that the Committee was wrong to reject her evidence that Mr Stempa told her that the property had two “legal” and “exclusive” carpark, and to prefer his evidence that he reiterated the vendor’s information, that there was carparking space available in front of the garage, provided using it did not impede or obstruct others using the common areas. On Mr Stempa’s evidence, he did not make an erroneous representation, and the representation he made was based on a genuine belief that two carpark were available, one in the garage, and one in front of it.

[36] As to the advertising material, it is important that the information provided by Mr Stempa’s information included copies of the title and the lease. Clauses 31 and 32 were directly relevant to the issue of carparking. Mrs Rahim had the opportunity to, and did, refer these to her solicitor for legal advice. Her submission that it would not be expected that her lawyer should check on the validity of the representations made by the Agency or agent is misconceived. Rather, the lawyer’s role will be to review and advise his or her client as to the meaning and implications of any legal document relating to the particular transaction.

[37] Further, we note that in answer to questions from the Tribunal, Mrs Rahim acknowledged that she and her husband had used the area outside their garage for

carparking for more than three years, that she would not have expected to park in front of the neighbour's garage, and would not have expected the neighbour to park in front of her garage.

[38] We are not satisfied that Mrs Rahim has established that the Committee was wrong to decide to take no further action on her complaint as to carparking. We therefore dismiss Mrs Rahim's appeal against the Committee's decision on the carparking issue.

(b) House colour

Evidence before the Committee

[39] The Committee had conflicting evidence. Mrs Rahim said that when she and her husband had their private viewing of the property, they asked Mr Stempa about the situation regarding the painting of the house. She said that Mr Stempa told them that they could paint their side of the property any colour they wished to paint it.

[40] Mr Stempa's evidence was that when he was explaining the difference between a unit title and a cross lease to Mr and Mrs Rahim, he said that they would be responsible for painting their own unit. He said he did not talk about paint colours, and did not recall Mr and Mrs Rahim asking him specifically about paint colours. He said, further, that if he had been asked, he would have referred to the lease, as he is aware that with cross-lease properties, there are rules about maintenance.

Committee's decision

[41] The Committee described the evidence on this point as a "he said, she said" situation, without any evidence confirming or not confirming either statement. It therefore found that it could not make a valid ruling. However, the Committee referred to cl 28 of the lease, as to the exterior painting, and Mrs Rahim's confirmation that she had received the lease and title, and had forwarded them to her solicitor and obtained advice.

Submissions

[42] Ms Rahim's written submissions did not refer to this issue. In her oral submissions, she acknowledged that this was a minor issue, but submitted that it was still an issue. She submitted that Mr Stempa's evidence that he "could not recall" being asked about painting their house was not a denial that it had occurred.

[43] She acknowledged that the lease is clear as to house colours, but submitted that the Committee should have accepted her evidence that whatever the lease said, Mr Stempa made a statement to her, and she trusted him and took him at his word.

[44] Mr Eves did not make any submissions on this issue.

[45] Ms Trezise submitted that the Committee was justified in finding that it could not make a determination on the point. While acknowledging that a Committee may make credibility findings where there is conflicting evidence, she submitted that this was not a case where a credibility finding could be made safely. She submitted that there was no contemporaneous documentation or other evidence providing any corroboration for either party, and that Mrs Rahim's allegation was neither so credible, nor incredible, such that it was inherently or unlikely to have been made.

Discussion

[46] As the complainant, Mrs Rahim had the onus of establishing on the balance of probabilities that her complaint was valid, and justified. On appeal, she has the onus of establishing that the Committee was wrong to find that she had not established that it was more likely than not that Mr Stempa said that the house could be painted any colour they wanted. We are not satisfied that she has done so on this issue.

[47] We further note that, as with the carparking issue, Mrs Rahim was given a copy of the lease, and the opportunity (which she took) to take legal advice on it.

[48] Mrs Rahim's appeal against the Committee's decision to take no further action on this issue is, therefore, dismissed.

(c) The auction

Evidence before the Committee

[49] Mrs Rahim's evidence was that Mr and Mrs Dowdle knew her husband, and when they expressed interest in the property Mr Dowdle said, on several occasions, that he would look after them. She said that at one of their viewings of the property, she told Mr Stempa that they could go to \$650,000 to buy it. She further said that on the day of the auction, Mr Dowdle checked with Mr Rahim as to their ability to go to \$650,000, and Mr Rahim confirmed that was correct.

[50] Mrs Rahim then said that after the auction had been paused, when she was the highest bidder at \$620,000, Mr Dowdle told her that the Vendor's reserve was \$650,000. She said that, in isolation, she had thought that the fact that their top figure was \$650,000, the same as the vendor's reserve, was a coincidence. However, she said she was later told by neighbours that the vendors were happy to sell the property for "somewhere in the high \$500,000s". On hearing that, she believes that Mr Dowdle and Mr Stempa used their knowledge of their top figure against them, in order to increase their bid beyond \$620,000.

[51] Mrs Rahim further said that when she met Mr Eves in connection with her complaint to the Agency, he told her that the reserve was \$620,000. On that basis, she said the property should have been declared as being on the market when she bid \$620,000. She also said that Mr Eves told her at the meeting that the vendor's reserve sheet was missing from the Agency's file for the property. She said that she was not aware of there being such a document.

[52] Mr Stempa's evidence to the Committee was that he was aware of the vendor's reserve, he did not discuss the reserve with Mr and Mrs Rahim, other than telling them that if they had up to \$650,000 to spend, they should attend the auction.

[53] Mr Dowdle's evidence was that he knew Mr Rahim before the auction, and met Mr and Mrs Rahim at the auction. At that time he asked what their budget was, as a

general question in the course of the conversation. He said that this was a natural question for a salesperson to ask.

[54] He said that the vendor's initial reserve was \$600,000, and was confidential to the vendor, himself as auctioneer, and Mr Stempa as salesperson. He said he did not (and would not) disclose the reserve price to anybody, and his standard preamble to an auction clearly states the confidentiality of the reserve during and after the auction. In particular, he said that he has never told a purchaser what the vendor's reserve is, in order to achieve an increase in a bid. Instead, he uses statements like: "would you pay...", "How close can you get to ...", and "Let me take your increase to the vendor".

[55] In the present case, Mr Dowdle said that when bidding stopped at \$620,000, the bid was referred to the vendors. The vendors then exercised their right (set out on the reserve sheet signed before the auction) to change the reserve price during the auction. He said that he then asked Mrs Rahim if she could increase her bid to \$650,000. He denied that he disclosed the vendor's reserve price. Mrs Rahim then increased her bid to \$635,000. This was then referred to, and accepted by, the vendor. The vendor's reserve was adjusted again to align with Mrs Rahim's bid.

The Committee's decision

[56] The Committee did not find any fault with the Agency's auction policy, and found that the auction was run in accordance with the Agency's in-house rules. It noted that the Agency's reserve sheet reserves the vendor's right to alter the reserve price, and in this case the vendor did so.

[57] The Committee also referred to a licensee's fiduciary duty to the vendor client, which is to get the best price possible on whatever market exists at the time of sale. The Committee took the view that Mr Dowdle had done that, by negotiating an increase in the price of \$15,000 over Mrs Rahim's earlier bid (while at the same time, Mrs Rahim secured the property for \$15,000 less than she was prepared to go to).

Submissions

[58] Mrs Rahim submitted that Mr Dowdle had used information given to him (as to their budget) in a manner that could not be considered to be ethical, or fair. She submitted that if the vendor had set the reserve at \$650,000 before the beginning of the auction, members of the public would have considered this to have been fair. She submitted that it is absurd to suggest that a reserve can be moved up and down at the whim of the vendor it being written or signed off.

[59] Mrs Rahim also referred to the vendor's reserve sheet in this case being missing from the Agency's property file. She submitted that the Agency had destroyed it because it was incriminating. She also submitted that it was "common practice" for a reserve to be set high then reduced, but not to be set low and then increased.

[60] Mr Eves submitted that the Committee was right to find there was no fault on the part of Mr Dowdle.

[61] Ms Trezise submitted that it would have been inconsistent with Mr Dowdle's fiduciary duty to the vendor for him to have put the property on the market once bidding reached a certain level, without first confirming with the vendor that he was instructed to do so. She submitted that while this would be subject to his other duties of, for example, good faith and fair dealing, there was no evidence of those duties being breached in this case, and the Committee was correct to find there was no such breach.

[62] Ms Trezise further submitted that there was no evidence from which it could be inferred that Mr Dowdle and Mr Stempa had misused confidential information as to her budget.

Discussion

[63] Mrs Rahim has not established that the Committee was wrong to find that Mr Dowdle's conduct in running the auction did not meet the threshold of unsatisfactory conduct, that the auction was carried out in accordance with the Agency's in-house

rules, and that Mr Dowdle's conduct of the auction did not breach any of his obligations under the Rules, either to the vendor or to Mrs Rahim as a customer. As the Committee noted, Mr Dowdle had a fiduciary duty to his client to sell the property for the best price possible, while at the same time complying with his obligations of good faith and fairness to a prospective purchaser.

[64] A licensee is not obliged to disclose a vendor's reserve to a prospective purchaser, nor to advise the prospective purchaser when the reserve is, or is not, reached. Also, as Ms Trezise submitted, Mr Dowdle would have been in breach of his duty to the vendor if he had put the property on the market when her bid was at or over the vendor's reserve, without having the vendor's instructions to do so.

[65] Further, we are satisfied that the Agency's usual vendor's reserve sheet would have been used in this case, as is the Agency's usual practice. There is nothing before the Committee that would have enabled it to draw a reasonable inference that the vendor did not in this case change the instructions as to the reserve (expressly allowed in the reserve sheet). Nor was there anything before the Committee that would have enabled it to draw a reasonable inference that the Agency had deliberately destroyed the reserve sheet used in the present case.

[66] Finally, we accept Ms Trezise's submission that other than Mrs Rahim's suggestion, there was no evidence before the Committee which would support an inference that Mr Dowdle and/or Mr Stempa had mis-used information as to Mrs Rahim's budget. Mrs Rahim's hearsay evidence of a neighbour's comment cannot be put forward in support of her allegation.

[67] Mrs Rahim's appeal against the Committee's decision that Mr Dowdle's conduct did not meet the threshold of unsatisfactory conduct, and that it would take no further action on this aspect of her complaint is, therefore, dismissed.

(d) Mr Eves' handling of Mrs Rahim's complaint to the Agency

[68] The Committee's conclusion that there was nothing of substance to find unsatisfactory conduct by Mr Eves in relation to his handling of Mrs Rahim's

complaint to the Agency and to dismiss that part of her complaint to the Authority, was not expressly an element of Mrs Rahim's appeal.

[69] However, for completeness, we record that we see no reason to differ from the Committee's conclusion that the evidence before it as to the dealings between Mrs Rahim and Mr Eves was a "he said, she said" situation, on which it could not make a decision that the complaint was made out. Nor do we see any error in the Committee's observation that Mr Eves had no part in the marketing or auction of the property and relied on evidence given to him in an (unsuccessful) attempt to mediate a settlement.

Outcome

[70] Mrs Rahim has not satisfied her onus of establishing that the Committee was wrong to decide to take no further action on her complaint against Mr Stempa and Mr Dowdle. The appeal is therefore dismissed.

[71] Pursuant to s 113 of the Act, the Tribunal draws the parties' attention to s 116 of the Act, which sets out the right of appeal to the High Court. The procedure to be followed is set out in part 20 of the High Court Rules.

Hon P J Andrews
Chairperson

Ms C Sandelin
Member

Mr N O'Connor
Member