BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2021] NZREADT 12

READT 026/20

IN THE MATTER OF	An appeal under section 111 of the Real Estate Agents Act 2008
BETWEEN	SARAH WALKER Appellant
AND	THE REAL ESTATE AGENTS AUTHORITY (CAC 1907) First Respondent
AND	BENJAMIN HICKSON Second Respondent

On the papers

Tribunal:	Hon P J Andrews, Chairperson Mr G Denley, Member Ms F Mathieson, Member
Submissions filed by:	Ms Walker, Appellant Mr J Herring, on behalf of the Authority Mr J Tian, on behalf of Mr Hickson
Date of Decision:	26 March 2021

DECISION OF THE TRIBUNAL

Introduction

[1] Mrs Walker has appealed pursuant to s 111 of the Real Estate Agents Act 2008 ("the Act") against the decision of Complaints Assessment Committee 1907 ("the Committee"), issued on 14 September 2020, in which it made penalty orders against Mr Hickson ("the Committee's decision").[1]

Background

[2] Mrs Walker and her husband ("the appellants") were the vendors of a property near Whakatane. In June 2019 they listed it for sale by auction with Mr Hickson, a licensed salesperson engaged at Success Realty Limited, trading as Bayleys Rotorua ("the Agency").

[3] On 26 June 2019 the appellants received a pre-auction offer from prospective purchasers, for $1.025 million, which they rejected. The property went to auction but was passed in. The prospective purchasers re-submitted the pre-auction offer after the auction and the property was sold to them, for the amount offered in the pre-auction offer.

[4] Mrs Walker subsequently complained to the Authority, making seven specific allegations as to Mr Hickson's conduct. The Committee investigated the complaint and upheld two of the allegations, in respect of which it made a finding of unsatisfactory conduct. It found that the remaining allegations were either not proved or did not constitute unsatisfactory conduct.

[5] The first allegation upheld by the Committee related to clause 21 in the pre-auction offer made by the prospective purchasers. The clause gave the vendors the right to take the property to auction, and accept a higher offer, notwithstanding having accepted the pre-auction offer. The prospective purchasers wanted this removed, and the appellants instructed Mr Hickson to remove it. He failed to do so and presented the pre-auction offer to the prospective purchasers with clause 21 included. The prospective purchasers struck out the clause and replaced it with an offer deadline.

---

1 Complaint C33105, Benjamin Hickson, Decision on Orders (14 September 2020).

[6] The appellants alleged that the prospective purchasers had intended to make an offer at $1.050 million, but as a result of Mr Hickson's actions, offered only $1.025 million.

[7] The Committee found that Mr Hickson had breached r 9.1 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 ("the Rules") by failing to act in the appellants' best interests and in accordance with their instructions.

[8] The second matter concerned the Agency's dealing with the deposit paid by the purchasers. The appellants provided the Agency with a screen shot of their ASB account so that the deposit could be paid into that account. Mrs Walker subsequently received a telephone call from Mr Hickson, saying that the Agency had received an email stating that the appellants wanted the deposit to be paid into a different, Westpac, account, and a deposit slip was required for that account. Mrs Walker told Mr Hickson that the appellants did not have, and never had had, a Westpac account, and they had not sent an email instructing that the deposit was to be paid into another account. Mrs Walker confirmed the details of the ASB account to Mr Hickson, and considered the matter settled.

[9] However, the deposit was not paid into the appellants' ASB account; it was paid into the Westpac account. The appellants involved their solicitors in the matter, and the appellants finally received payment of the deposit, one week later.

[10] The Committee found that Mr Hickson had breached r 5.1 of the Rules, in that he failed to exercise skill, care, competence, and diligence when carrying out real estate agency work, by failing to pass on to the Agency that the deposit was to be paid to the appellants' ASB account, not the Westpac account, and to ensure that the deposit was paid into the correct account.

The Committee's penalty decision

[11] The Committee recorded that the appellants had requested a full refund of the commission charged by Mr Hickson ($23,718.75), and compensation of $45,000, being the difference between the purchase price paid and what the appellants claimed

the purchaser would have paid had Mr Hickson handled things differently. The Committee also recorded the appellants' submission that Mr Hickson should be reprimanded and receive training in client and customer care, avoiding misleading behaviour, and guidance as to the communication of property value, negotiation skills, and professionalism.

[12] The Committee recorded the submissions for Mr Hickson, that beyond publication of the decision, no penalty orders were necessary. It was submitted that if the Committee were minded to order a penalty, it would be consistent with past decisions concerning similar conduct that a fine should not be ordered, and the penalty should be limited to a censure or reprimand and/or an order that Mr Hickson undergo training. The Committee recorded that Mr Hickson had apologised to the appellants.

[13] With respect to the claim for a commission refund, the Committee referred to its power under s 93(1)(e) of the Act to order a refund of fees charged for work where that work is the subject of the complaint. It stated that a connection between errors or omissions in the services provided by a licensee and a complainant's liability for commission is required before an order for refund of commission can be made. It found that it was not established that Mr Hickson's conduct had affected the sale price for the property, and it was, therefore, not satisfied that a refund should be ordered.[2]

[14] Regarding Mr Hickson's submission that no fine should be ordered, the Committee considered that his handling of the matter of the appellants' bank account details, in failing to ensure that the correct details were passed on, fell short of the standard that a reasonable member of the public is entitled to expect from a reasonably competent licensee. The Committee noted that Mr Hickson had become aware of an anomaly between email correspondence to the Agency and Mrs Walker's instructions, the circumstances had the potential to result in serious loss, and they required a careful approach.

[15] The Committee preferred a fine over required training, as a matter of personal and general deterrence. It assessed Mr Hickson's conduct to be in the low range of unsatisfactory conduct, which would indicate a fine in the range of up to $3,000. The

---

2 Committee's decision, at paragraph 4.4.

Committee took into account Mr Hickson's previously unblemished record and the fact that he had accepted responsibility for his unsatisfactory conduct, before ordering him to pay a fine of $1,000.[3]

[16] With respect to the appellants' request for compensation under s 110 of the Act, the Committee noted that it had no jurisdiction to make such an order, as only the Tribunal has the power to order a licensee to pay compensation. The Committee then referred to s 93(1)(ha) of the Act, pursuant to which a Complaints Assessment Committee may refer a matter to the Tribunal to consider a compensation order, if it is satisfied that unsatisfactory conduct involves more than a minor or technical breach of the Act or Rules. It noted that s 93(1)(ha) had no application in the present case as it came into force on 29 October 2019 and applies only to conduct after that date, and Mr Hickson's unsatisfactory conduct occurred before then. The Committee observed that even if it had had jurisdiction to refer the matter to the Tribunal, it would not have been satisfied that Mr Hickson's unsatisfactory conduct warranted referral to the Tribunal.

Approach to appeals against penalty decisions

[17] As Mr Herring noted in his submissions for the Authority, there is conflicting High Court authority as to the approach to be taken in considering appeals against a penalty determination, as to whether it is a "general" appeal (in which the appellate Court or Tribunal arrives at its decision on its own assessment of the merits of the case, having regard to the fact that the decision-maker is a specialist professional disciplinary body with particular expertise),[4] or an appeal against the exercise of a discretion (in which an appeal will be allowed if the decision-maker made an error of law or principle, took irrelevant factors into account or failed to take relevant matters into account, or was plainly wrong).[5]

---

3 At paragraphs 4.5–4.7.

4 See *Kacem v Bashir* [2010] NZSC 112, [2011] 2 NZLR 1; and *Morton-Jones v The Real Estate Agents Authority* [2016] NZLR 1804.

5 See *May v May* (1982) 1 NZFLR 165(CA); and *Drever v Complaints Assessment Committee 403* [2017] NZHC 2213.

[18] In practice, however, as the Tribunal noted in its decision in *Fear v Real Estate Agents Authority (CAC 411)*,[6] the distinction between the two approaches may be less significant in professional disciplinary proceedings than in other proceedings, as there are constraints on the exercise of the discretion in relation to penalties imposed in disciplinary proceedings. In professional disciplinary proceedings penalty is determined by reference to the particular circumstances of the case, the principles and purposes of the Act, and the importance of ensuring that professional and industry standards are maintained.[7] We note Mr Herring's submission that in the present case, the Authority takes no issue with the appeal being dealt with as a "general" appeal rather than under the stricter criteria of an appeal against the exercise of a discretion.

[19] When considering the appellants' appeal against the Committee's penalty decision, the Tribunal must have regard to the purposes of the Act, and the principles on which penalties are determined.

[20] The principal purpose of the Act is 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."[8] The Act achieves these purposes by regulating agents, branch managers, and salespersons, raising industry standards, and by providing accountability through a disciplinary process that is independent, transparent, and effective.[9]

[21] Penalties for misconduct and unsatisfactory conduct are determined by having regard to the need to maintain a high standard of conduct in the industry, the need for consumer protection, the maintenance of confidence in the industry, and the need for deterrence.

[22] A penalty should be appropriate for the nature of the misbehaviour, and the Committee or the Tribunal (as the case may be) should endeavour to maintain consistency in penalties imposed for similar conduct, in similar circumstances. The penalty imposed should be the least punitive penalty that is appropriate in the

---

6 *Fear v Real Estate Agents Authority (CAC 411)* [2018] NZREADT 17, at [38]–[39].
7 See *Morton-Jones v The Real Estate Agents Authority*, at paragraphs [87]–[93].
8 Section 3(1) of the Act.
9 Section 3(2).

circumstances. While there is an element of punishment, rehabilitation is an important consideration.[10]

Appeal issues

[23] Section 93(1) of the Act sets out the orders that a Complaints Assessment Committee may make following a finding of unsatisfactory conduct. As relevant to the present case, the Committee had the power to make an order censuring or reprimanding Mr Hickson (s 93(1)(a)), order that he undergo training or education (s 93(1)(d)), order him to "reduce, cancel, or refund fees charged for work where that work is the subject of the complaint" (s 93(1)(e)), and to order him to pay a fine of up to $10,000 (s 93(1)(g)).

[24] The Tribunal is required to consider whether the Committee erred in determining that:

[a] Mr Hickson's conduct did not affect the sale price for the property, and that a refund of commission under s 93(1)(e) of the Act was not appropriate;

[b] as a matter of personal and general deterrence, a fine was a more appropriate penalty than ordering Mr Hickson to undergo training;

[c] Mr Hickson's unsatisfactory conduct was in the lower range, and with a previous good record, and accepting responsibility, a fine of $1,000 was appropriate;

[d] it was unable to order compensation under s 110 of the Act; and

[e] it could not refer the matter to the Tribunal under s 93(1)(ha) of the Act to consider compensation under s 110(5), as Mr Hickson's conduct occurred

---

[10] See *Complaints Assessment Committee 10056 v Ferguson* [2013] NZREADT 30, *Morton-Jones v The Real Estate Agents Authority* [2016] NZHC 1804, at [128] and *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1, at [97].

before s 93(1)(ha) came into effect, and that even if referral were available, the conduct did not warrant referral.

Was the Committee wrong to determine not to order a refund of commission?

Submissions

[25] Mrs Walker's submissions covered the appellants' requests for a refund of commission and compensation. She did not refer to other aspects of the Committee's penalty decision. In her Notice of Appeal, Mrs Walker set out the grounds of appeal as follows:

> We believe there is sufficient evidence and witnesses to prove that [Mr Hickson's] actions and attitudes towards our buyers that resulted in financial loss to us. We firmly believe that we should be compensated for this. The buyer themselves have shown willing to testify to this and state that had [Mr Hickson] acted as requested by us and by the buyer that we would have achieved a greater sale price. In addition they would have been willing to negotiate had they not decided to stand firm due to [Mr Hickson's] approach and refusal to allow us all to meet. This and a total disregard for our own requests as his clients leads us to this conclusion.

[26] In submissions to the Tribunal, Mrs Walker submitted that had Mr Hickson allowed the appellants and the prospective purchasers to "sit around the table", as both parties requested, and had he not alienated the prospective purchasers by his attitude an unprofessionalism, they would have achieved a better offer. She further submitted that Mr Hickson was specifically asked to leave out cl 21, and to treat the prospective purchasers with "kid gloves", yet he did neither, and he refused a meeting between the prospective purchasers and the appellants. She submitted that the prospective purchasers' offer was a clear and significant reduction from their initial position, and a direct result of Mr Hickson's attitude.

[27] Mr Tian submitted on behalf of Mr Hickson that the Committee was correct in not ordering a refund of commission, on the grounds that it was not established that Mr Hickson's conduct affected the sale price. He submitted that a refund of commission in a disciplinary context is not to compensate for any financial loss suffered by a complainant, but may be used to achieve the purposes of the Act.[11] He

---

[11] Citing *Fear v Real Estate Agents Authority (CAC 411)*, fn 6, above.

submitted that a refund of commission ought only be appropriate in cases where there has been a failure by a licensee to provide the services reasonably expected of a licensee, whether in part or in full. He submitted that in the present case, a successful sale of the property was achieved through Mr Hickson, so there could be no suggestion that he had failed to provide the entire compass of services for which commission was payable.

[28] Mr Tian further submitted that although it is acknowledged that the appellants may view Mr Hickson's general conduct as falling short of what they expected, the fact that his conduct had no objective or material effects on the transaction means that any attempt to determine what portion of the commission related to those aspects of his conduct would be artificial.

[29] Mr Herring submitted on behalf of the Committee that a licensee's engagement to market a vendor's property involves the provision of a range of services (that is, a range of work), for which an agreed commission will be paid. He submitted that while the Committee found that Mr Hickson's conduct was a failure to provide particular aspects of the expected service, there was no evidence before the Committee that he failed provide other components of the service, or do other work, he was engaged to provide. He pointed to other aspects of Mr Hickson's work which were the subject of allegations in the appellants' complaint, which the Committee did not uphold.

[30] Mr Herring submitted that, in the circumstances, the Committee's decision not to order a refund of commission was appropriate.

Discussion

[31] We note Mrs Walker's reference to Mr Hickson not having allowed the appellants and the prospective purchasers to "sit around the table". While that was one of the appellants' complaints, it was not upheld by the Committee, so cannot be considered in the context of penalty. The relevant findings are that Mr Hickson breached r 9.1 by not removing cl 21 from the pre-auction offer, and that he breached r 5.1 in his conduct in relation to the deposit.

[32] The Tribunal considered the circumstances in which a partial or full refund of commission in its decision in *Fear v Real Estate Agents Authority (CAC 411)*.[12] In that case, Complaints Assessment Committee 411 ("CAC 411") had made findings of unsatisfactory conduct against Mr Fear on two aspects of a complaint: as to his disclosure of confidential information concerning his vendor clients, and as to his having put his clients under undue or unfair pressure to accept an offer on their property.

[33] The Committee did not uphold complaints that Mr Fear colluded with a prospective purchaser in order to obtain a bargain for the purchaser, and that he failed to give the vendors any opportunity to seek legal advice. As to commission, CAC 411 ordered Mr Fear to refund his entire share of the commission (which was approximately 40 percent of the total commission charged) on the sale of the property.

[34] Mr Fear appealed to the Tribunal. On this aspect of his appeal, the issue was whether the determination whether to order a refund of commission, and if so, the amount to be refunded, should be considered against the total commission charged, or Mr Fear's share. One matter the Tribunal was required to consider was the fact that the commission charged was at less than Mr Fear's agency's standard rate. The Tribunal commented as to the general principles relating to applications for refunds of commission, as follows:[13]

> [41] … We accept [the Authority's] submission that the purpose of an order to refund commission charged on a transaction in the context of disciplinary proceedings under the Act is not to compensate for any financial loss on the transaction. Rather, an order for a commission refund may be made to achieve the purposes of the Act.
>
> …
>
> [44] A licensee's engagement to market a vendor's property involves the provision of a range of services (that is, a range of work), for which the parties agree that a commission will be charged. While the Committee found that Mr Fear's conduct was a failure to provide particular aspects of the expected service, there was no evidence before the Tribunal that Mr Fear failed to provided other components of the service, or do other work, he was engaged to provide.
>
> [45] We accept that a determination as to whether an order is made for a commission refund, and if so, the quantum of such order, will necessarily be fact-specific. Nevertheless, the determination should be on a principled basis.

---

12 *Fear v Real Estate Agents Authority (CAC 411)*, fn 6, above.
13 At [41]–[48].

> We have concluded that an order for a commission refund should identify and relate to the particular aspect or aspects of the work done by the licensee in respect of which the refund is being ordered. Thus, if (as in the present case) an order is made for refund of a full commission share, then it must be clear, on analysis, that the entire compass of the work done by the licensee was such as to require that refund. It is not apparent that this analysis has been undertaken in this case.
>
> …
>
> [48] Taking into account the commission discount, and the fact that there is no evidence that Mr Fear failed to provide the services expected of a licensee across the full compass of his real estate agency work in the sale of Mr and Mrs Sutton's property, we have concluded that the proper order is that he should refund $4,000 of his commission share.

[35] In the light of the Committee's rejection of five of the appellants' complaints, it cannot be said that Mr Hickson failed to provide "the entire compass" of the services expected of him. The Committee did not err in declining to order Mr Hickson to refund the full commission paid to him. However, it made that decision on the basis that "it was not established that [Mr Hickson's] conduct had affected the sale price".[14] While it may be relevant to consider whether particular conduct has affected the eventual sale price, it is not the only, or determinative, factor. As the Tribunal said in *Fear*, a commission refund may be made in order to achieve the purposes of the Act.

[36] The Committee did not consider whether it would be appropriate in the present case, in order to achieve the purposes of the Act, to order a partial refund of commission. We do not accept Mr Tian's submission that any attempt to determine what portion of commission related to particular aspects of Mr Hickson's conduct would likely be artificial. The fact that the Act gives Complaints Assessment Committees the power to order licensees to "reduce, cancel or refund" commissions shows that it was intended that they could, and would, carry out the exercise of determining what portion of commission should be refunded, in respect of work that is found to be in breach of licensees' duties.

[37] We have considered whether a partial refund of commission should be made in order to achieve the purposes of the Act. We have concluded that this is not an appropriate case for such a refund. In reaching this conclusion we have taken into

---

14 Committee's decision, at paragraph 4.4.

account the nature of Mr Hickson's breaches of the Rules, and the fact that he discounted his commission over an issue as to chattels.

Was the Committee wrong to order a fine of $1,000, and not order Mr Hickson to undertake further training?

Submissions

[38] Mr Tian submitted that the Committee's decisions to order a fine, and that it would not order Mr Hickson to undergo further training, were appropriate. He referred to Mr Hickson's submission to the Committee that he had already taken upon himself to update practices and systems around the handling of deposit payments, to ensure that a similar situation does not re-occur, and that he had apologised to the appellants. He also submitted that a fine served the purposes of the Act of protecting the public by way of personal and general deterrence.

[39] He further submitted, by reference to previous decisions of Complaints Assessment Committees, that the level of the fine was appropriate, given the Committee's assessment of Mr Hickson's conduct as being in the low range of unsatisfactory conduct, and the applicable mitigating factors.

[40] Mr Herring referred to previous Tribunal decisions as to penalty in somewhat similar circumstances and submitted that the Committee's starting point of a fine of $3,000, and its end point (after applying mitigating factors) of $1,000 was within range for Mr Hickson's unsatisfactory conduct, and that no error of principle could be identified.

Discussion

[41] While the Tribunal endeavours to maintain consistency in penalty decisions, those decisions must be made on the facts and circumstances of the particular case. It is seldom, if ever, the case that the facts and circumstances of one case are identical to those of another. We refer briefly to the Tribunal's penalty decisions cited in Mr Herring's submissions for the Authority.

[42] In *Burn v Real Estate Agents Authority (CAC 20002)*, the licensee failed to inform prospective purchasers that there were compliance issues relating to a deck on a property. The Tribunal allowed the purchaser's appeal against a Complaints Assessment Committee's decision to take no further action and found the licensee guilty of unsatisfactory conduct at a "relatively low level". The Tribunal indicated a fine of $2,000 but did not set out its reasoning in doing so.[15]

[43] In *Grindle v Real Estate Agents Authority (CAC 20004)*,[16] a licensee appealed unsuccessfully against a Complaints Assessment Committee's finding of unsatisfactory conduct and its order that he pay a fine of $2,000. The licensee had passed on milk production figures provided by the vendor of a farm property, without verifying them or advising the prospective purchasers that they were unverified. In dismissing the appeal, the Tribunal recorded that the Committee had assessed the licensee's conduct as falling into the mid-range of seriousness, but took into account that he had immediately admitted his error, and that the vendors had given him the wrong information. The Tribunal assessed the licensee's conduct as at a low to mid-level in the circumstances of the case, made an order for censure, and ordered him to a fine of $1,000.

[44] In *Burrows v Real Estate Agents Authority (CAC 20002)*, the Tribunal considered penalty, having earlier allowed an appeal against a Complaints Assessment Committee's decision to take no further action on a complaint, and making a finding of unsatisfactory conduct against two licensees.[17] The Tribunal found that the licensees had breached r 9.1 by failing to follow their client vendor's instructions to share the commission on the sale of the client's property with another licensee, Mr R. The Tribunal ordered each of the licensees to pay a fine of $1,000, and to refund the licensees 20 percent of the commission they received, for payment to Mr R.

[45] In *Complaints Assessment Committee v Brady*, the licensee was charged with misconduct under s 73(b) of the Act (seriously incompetent or seriously negligent real estate agency work).[18] Mr Brady admitted that he had advised a vendor to delete a

---

15 *Burn v Real Estate Agents Authority (CAC 20002)* [2014] NZREADT 25, at [57]–[59].
16 *Grindle v Real Estate Agents Authority (CAC 20004)* [2014] NZREADT 85.
17 *Burrows v Real Estate Agents Authority (CAC 20002)* [2015] NZREADT 53.
18 *Complaints Assessment Committee 409 v Brady* [2019] NZREADT 21.

clause in an agreement for sale and purchase which stated that the purchaser had been made aware that aspects of the property may not comply with the building code. Mr Brady had given this advice on the basis of information given to him by the vendor, which Mr Brady had not verified.

[46] The issue for the Tribunal was whether Mr Brady's conduct constituted misconduct (under s 73) or unsatisfactory conduct (under s 72). The Tribunal concluded that Mr Brady had breached r 9.1 of the Rules, and was guilty of unsatisfactory conduct, which it assessed at being at the mid to upper level of unsatisfactory conduct. The Tribunal made an order for censure and ordered Mr Brady to pay a fine of $3,500.

[47] We note that in each of the cases set out above, the licensee's conduct involved only one instance of a breach of the Rules, albeit of varying seriousness. In the present case, Mr Hickson was found to have breached the Rules in two distinct contexts: he failed to follow the appellants' instructions to remove cl 21 from the pre-auction agreement for sale and purchase (in breach of r 9.1), and he failed to pass on advice that the appellants had not instructed the Agency to pay the deposit into a Westpac account and failed to ensure that the deposit was paid into the correct account (in breach of r 5.1).

[48] Mr Hickson's failure to remove cl 21 was a breach of a fundamental rule governing the relationship of licensee and client, but its impact was immediately mitigated by the purchaser's having removed the clause. However, the deposit was received by Mr Hickson's agency as agent for the appellants and was held in trust for payment to the appellants. The payment of the deposit into the wrong bank account could have been very costly for the appellants. In the circumstances, we have concluded that the Committee erred in imposing a fine of $1,000.

[49] Mr Hickson's unsatisfactory conduct required an order that he pay a fine of $2,000, and it required an order for censure.

Was the Committee wrong to decline to make an order for compensation

Submissions

[50] Mr Tian submitted that the Committee correctly found that the Committee did not have power to order compensation under s 110 of the Act, and correct to find that s 93(1)(ha) of the Act did not apply in this case, as Mr Hickson's unsatisfactory conduct occurred before s 93(1)(ha) came into effect.

[51] Mr Herring also submitted that the Committee does not have power to award compensation to complainants, and that the Committee was not wrong to determine not to award compensation. He also submitted that the Committee's power to refer a matter to the Tribunal to consider an award of compensation was not in effect at the time of Mr Hickson's unsatisfactory conduct, and the Committee correctly determined that it could not refer the appellants' claim for compensation to the Tribunal.

Discussion

[52] The Committee did not err in finding that it did not have the power to make an award of compensation. Section 110 (2)(g) of the Act gives the Tribunal the power to make an award of compensation, following a finding of misconduct. Section 93 does not confer such a jurisdiction on Complaints Assessment Committees.

[53] While it is correct that s 93(1)(ha) of the Act now provides that the Committee may refer a matter to the Tribunal to consider compensation (that provision having been inserted into the Act as from 29 October 2019 pursuant to the Tribunals Powers and Procedures Legislation Act 2018) it was not in effect at the time Mr Hickson was engaged in the sale of the appellants' property, and cannot be applied in respect of his conduct. It is irrelevant to the appellants' appeal whether the Committee would have referred the matter to the Tribunal, if s 93(1)(ha) had been in effect.

Outcome

[54] The appellants' appeal is determined as follows:

[a] Request for refund of commission: the appeal is dismissed

[b] Fine: the order that Mr Hickson pay a fine of $1,000 is quashed and replaced with an order that he pay a fine of $2,000. The fine (or the additional $1,000) is to be paid to the Registrar within 20 working days of the date of this decision. We also make an order censuring Mr Hickson.

[c] Request for order that Mr Hickson pay compensation: The appeal is dismissed.

[55] 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

_____
Mr G Denley
Member

_____
Ms F Mathieson
Member