

**BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

[2022] NZREADT 8

Reference No: READT 025/2021

**IN THE MATTER OF**

An appeal under s 111 of the Real Estate Agents Act 2008

**BETWEEN**

**EX** and  
**XN**  
Appellants

**AND**

**THE REAL ESTATE AGENTS AUTHORITY  
(CAC 2104)**  
First Respondent

**AND**

**MU** and  
**DS**  
Second Respondents

Hearing on the papers

Tribunal:

D J Plunkett (Chair)  
G Denley (Member)  
F Mathieson (Member)

Representation:

The appellants: Self-represented  
Counsel for the first respondent: S A H Bishop, M A Shaw  
Counsel for the second respondents: J Tian

**SUBJECT TO NON-PUBLICATION ORDER**

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**DECISION**  
**Dated 5 May 2022**

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## INTRODUCTION

[1] EX and XN (the purchasers) have appealed against the decision of Complaints Assessment Committee 2104 (the Committee) which decided to take no further action on their complaint against MU (the licensee) and her manager DS (the manager).

## BACKGROUND

[2] The licensee is a licensed salesperson at S Ltd, t/a IJ (the agency). The manager is a licensed agent at the agency.

[3] The complaint concerns the sale of a property in a town in the [Region]. The vendor's husband had committed suicide on the property in early 2020.

[4] The vendor entered into a listing agreement with the agency on 25 June 2020. The agreement stated under "Remarks":

Disclosure – Suicide by husband in the [location identified]. Correct processes to be followed.

[5] The purchasers viewed the property with the licensee on 30 July 2020 and entered into an agreement to purchase it on 3 August 2020. Settlement occurred on 1 or 2 September 2020.

[6] According to the purchasers, a short time after settlement, they were informed of the suicide at the property for the first time.

### *Complaint made to agency*

[7] The purchasers made a complaint against the licensee to the agency by email on 27 October 2020. They stated that they had just found out that the vendor's husband had committed suicide on the property a few months prior to the house being listed. At no point had the licensee disclosed that there had been a suicide on the property. They were shocked when they found out. They know that the licensee was a friend of the vendor. They would not have bought the property had they known of this incredibly serious matter.

[8] On learning of the complaint, the licensee sent an email to the manager on 28 October 2020 (at 8:36 am). She said she had disclosed what happened to everyone who went through.

[9] The manager replied by email to the purchasers on 28 October 2020 (at 2:51 pm). She had addressed the matter with the licensee and was confident that the latter had followed the correct procedure. She would check what was said to other prospective purchasers. The purchasers had acknowledged that the licensee had said he died suddenly, which is a sensitive code commonly used to describe a drug overdose or suicide. The vendor is a close friend of the licensee, so the licensee was being respectful to all concerned. It was also a well known fact in the community that a suicide had taken place, so at no point was this being kept secret.

[10] The purchasers responded on the same day (at 3:29 pm). They said that the word "suicide" was not mentioned. They did not know about it until after settlement. They do not know anyone in that community. They were told about a sudden death and assumed the owners were elderly people and it was a heart attack or stroke.

[11] The manager responded to the purchasers that day (at 9:58 pm). The sudden death was well known in the community, which was another reason why the licensee would not have withheld the information from them. The manager said she was not saying the purchasers knew about the sudden death prior to visiting the property. Suicide was a sensitive issue and was often referred to as a sudden death, out of respect for those who are impacted. It is their fiduciary responsibility to handle with care their vendors' instructions. Throughout this period, the licensee was under her direct supervision and followed all disclosure requirements.

[12] On the next day, 29 October 2020, the purchasers replied to the manager. They felt extremely cheated by what had happened. They now have to sell the property. The licensee did not actually say the word "suicide". She did not do so because she knew they would drive away.

## **THE COMPLAINT**

[13] On 25 November 2020, the purchasers made a complaint to the Real Estate Agents Authority (the Authority). They said they had been told on viewing the property that there had been a sudden death at a particular location on the property. The licensee did not mention suicide. It was assumed that the couple were elderly and the owner had a heart attack. They found out around the end of October that it was a suicide. They feel cheated and angry that they had not been given this information before they bought the property. They now have to sell as both of them are very uncomfortable owning it. It was supposed to be a rental and then a family home for the two of them in retirement.

*The evidence of the licensee and her manager to the Authority*

[14] A detailed statement (“Response”) of the licensee (1 March 2021) was provided to the Authority.

[15] The licensee stated that she had only just obtained her salesperson’s licence, on 5 June 2020. It was correct that she was a personal friend of the vendor. She was aware the vendor’s husband had committed suicide at the property. When she discussed listing the property with the vendor on 25 June 2020, she told the vendor that the correct processes would be followed and the suicide would be disclosed to prospective purchasers. The vendor agreed. Then on 1 July 2020, during a weekly supervision meeting, the manager discussed the disclosure obligation regarding the suicide at length with all agents at the agency. It was agreed that they had to disclose the suicide to all prospective purchasers.

[16] The licensee says she showed the property to approximately eight interested parties. Each time she told them about the suicide before they stepped on to the property, in case any of them felt uncomfortable viewing it with that knowledge. Before each viewing the manager had reminded her of the need to disclose the suicide. Afterwards, the manager always checked with her to confirm that she had done so.

[17] In her statement, the licensee set out in some detail what happened at the purchasers’ first viewing of the property on 30 July 2020. While on the roadside outside the property, she explained to them that there had been a suicide at a particular location on the property. Subsequently she used the phrase “sudden death” out of respect for the sensitive topic. But this was only after unambiguously telling the purchasers about the suicide, specifically using the word “suicide”.

[18] The Authority was provided with a statement (“Response”) of the manager (1 March 2021).

[19] The manager is a part-owner of the branch franchise. She said that she closely supervised the licensee and had accompanied her when the listing agreement was signed by the vendor. The latter agreed that the suicide would be disclosed to prospective purchasers.

[20] Every Monday and Wednesday morning, the manager ran supervision/training meetings for all agents. She discussed the disclosure obligation regarding the suicide at every meeting. She wanted to make sure that the agents knew the correct procedure. They had decided that the suicide had to be disclosed to prospective purchasers before they stepped on to the property. Because the licensee was a new agent, she reminded

her of the need to disclose it every time she took a prospective purchaser to a viewing and always followed it up afterwards, getting her confirmation that she had done so.

[21] According to the manager, she did not use the word “suicide” in her emails to the purchasers in late October 2020, as she did not want to spark an argument around whether that word had been used, instead diffusing the situation by referring to a “sudden death”. Unfortunately, it appeared from the subsequent emails that her attempt to find common ground had been misinterpreted as meaning that the licensee only referred to a “sudden death”, which was not correct.

[22] The licensee provided to the Authority a number of emails and letters from other prospective purchasers or colleagues at the agency:

1. Letter (undated) from a person who viewed the property, [occupation redacted], who confirmed being at the property in early July 2020 with the licensee and being informed of the suicide.
2. Email (10 February 2021) from a person who was shown through the property by the licensee and was informed of the suicide before visiting the property.
3. Email (17 February 2021) from a person who viewed the property with the licensee and was told halfway down the drive there had been a suicide.
4. Letter (16 February 2021) signed by two people who viewed the property with another agent at the agency who disclosed the suicide while they were outside the property.
5. Email (18 February 2021) from two people who viewed the property who state they were advised of the suicide.
6. Letter (5 February 2021) from a new agent at the agency who confirmed that at the weekly team meetings in June prior to the listing going live, the disclosure requirements around the suicide were clearly communicated by the manager. Prior to taking purchasers onto the property, a disclosure was to be made about the “specified death”.
7. Email (2 February 2021) from another agent at the agency, also a [occupation redacted], who confirmed that the manager at the twice weekly training sessions thoroughly discussed the disclosure requirement concerning the suicide. It was agreed that prospective purchasers would

be told of the suicide of the vendor's husband before they stepped foot onto the property.

*Decision of the Complaints Assessment Committee 2104*

[23] On 6 August 2021, the Committee decided to take no further action on the complaint. It concluded that it was more likely than not that the licensee had disclosed the death by suicide to the purchasers. It was satisfied that the licensee and manager had decided from the outset that disclosure was required and they followed a process aligned with that decision. The licensee had a clear recollection of when she made disclosure and the statements from others viewing the property confirmed that disclosure of the suicide, using the word "suicide", had been made.

**APPEAL**

*Submissions of the purchasers*

[24] The purchasers say that when they visited the property with the licensee, she advised them of a sudden death. At no point had she mentioned suicide. The manager had told all of her agents to tell potential purchasers about a sudden death. This unexpected death was thought to be from natural causes and they had assumed it was a heart attack or a stroke. The licensee and manager had deliberately lied to them. They are disgusted by the decision. It amounted to gross misconduct and was misleading. If they had known it was a suicide, they would not have bought the property.

*Submissions of the Authority*

[25] In her submissions of 19 November 2021, Ms Bishop, counsel for the Authority, notes that the purchasers have not provided submissions and that there is no new evidence for the Tribunal to consider. The Authority agrees with the submissions of the licensee and the manager. The Committee's decision rested on weighing two competing narratives, with the account of the licensee and the manager supported by independent evidence. The decision to take no further action was correct and the appeal should be dismissed.

*Submissions of the licensee and the manager*

[26] In submissions of 5 November 2021, Mr Tian, counsel for the licensee and the manager, notes the five statements from other prospective purchasers confirming disclosure and the use of the word "suicide". He further notes that the purchasers have

not identified how or why they consider the Committee's decision to be incorrect. They have chosen not to make any submissions in support of their appeal.

[27] It is well established that suicide is a sensitive issue that needs to be carefully considered pursuant to r 6.4, where the particular focus is on whether fairness requires suicide to be disclosed.<sup>1</sup> That is not in question in this case as it had been resolved at the outset that disclosure was required and the vendor's written consent had been obtained.

[28] The standard of proof is the balance of probabilities. The Committee highlights that the purchasers' allegation that suicide was never disclosed is not supported by any evidence other than their own account. On the other hand, the position of the licensee and the manager is supported by the evidence of prospective purchasers, agents and the vendor's consent to disclosure. The independent evidence is circumstantial, but it is submitted that it was sufficient for the Committee to reasonably infer that it was more likely than not that suicide was disclosed.

## **JURISDICTION AND PRINCIPLES**

[29] This is an appeal pursuant to s 111 of the Real Estate Agents Act 2008 (the Act).

[30] The appeal is by way of a rehearing.<sup>2</sup> It proceeds on the basis of the evidence before the Committee, though leave can be granted to admit fresh evidence.<sup>3</sup> After considering the appeal, the Tribunal may confirm, reverse, or modify the determination of the Committee.<sup>4</sup> If the Tribunal reverses or modifies a determination, it may exercise any of the powers that the Committee could have exercised.<sup>5</sup>

[31] A hearing may be in person or on the papers.<sup>6</sup> A hearing in person may be conducted by telephone or audiovisual link.

[32] This appeal is against the determination of the Committee under s 89(2)(c) to take no further action. It is a "general appeal". The Tribunal is required to make its own assessment of the merits in order to decide whether the Committee's determination is

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<sup>1</sup> Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 (the Rules).

<sup>2</sup> Real Estate Agents Act 2008, s 111(3).

<sup>3</sup> *Nottingham v Real Estate Agents Authority* [2017] NZCA 1 at [81] & [83].

<sup>4</sup> At s 111(4).

<sup>5</sup> At s 111(5).

<sup>6</sup> At ss 107, 107A.

wrong.<sup>7</sup> An appellant has the onus of showing on the balance of probabilities that their version of the events is true and hence the Committee is wrong.<sup>8</sup>

[33] On 29 September 2021, the Tribunal issued a Minute directing that the appeal be heard on the papers and setting out a timetable for submissions. As no subsequent application for an oral hearing was made, the Tribunal notified the parties on 29 October 2021 that the matter would be heard on the papers.

## **DISCUSSION**

[34] The dispute here is narrow. The purchasers say that prior to purchasing the property they were told of a sudden death at the property and that the word “suicide” was not used by the licensee. The licensee and her manager say that the licensee did disclose the event to the purchasers at their first viewing expressly using the word “suicide”.

[35] As counsel for the Authority and counsel for the licensee and manager contend, there is considerable independent supporting evidence as to the licensee’s disclosure. The disclosure is specifically identified in the listing agreement. Other prospective purchasers shown the property by the licensee or other agents at the agency confirm suicide was disclosed. Other agents at the agency confirm this had been discussed amongst all the agents and they all knew it was to be disclosed. Both the licensee and the manager in their statements set out clearly and precisely the process followed. The manager appears to be particularly assiduous in her mentoring of new agents.

[36] The purchasers bear the onus of proof before the Tribunal. There is no evidence independent of their own accounts to support their allegation. As Mr Tian observes, they have not identified any error of fact or law by the Committee, apart from the outcome. They chose not to make full submissions to the Tribunal. It would seem to us to be implausible that the licensee disclosed the suicide, using that word, to other prospective purchasers, but not to the purchasers.

## **OUTCOME**

[37] The appeal is dismissed. The outcome of the Committee’s decision is confirmed.

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<sup>7</sup> *Austin, Nichols & Co Inc v Stichting Lodestar* [2007] NZSC 103, [2008] 2 NZLR 141 at [5] & [16] and *Edinburgh Realty Ltd v Scandrett* [2016] NZHC 2898 at [112].

<sup>8</sup> *Watson v Real Estate Agents Authority (CAC 1906)* [2021] NZREADT 37 at [22] and the higher court authorities cited therein at fn 9.



[38] Pursuant to s 113 of the Act, the Tribunal draws the parties' attention to s 116, setting out the right of appeal to the High Court.

## **PUBLICATION**

[39] The Committee directed publication of its decisions without the names or identifying details of the purchasers, the property, the licensee and manager, and any third parties.

[40] In light of the outcome of this appeal and having regard to the interests of the parties and the public, it is appropriate to order publication without identifying the purchasers, the property, the licensee, the manager, the agency and the third party witnesses.

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D J Plunkett  
Chair

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G Denley  
Member

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F Mathieson  
Member