

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2024] NZREADT 01

Reference No: READT 001/2023

IN THE MATTER OF

Charges laid under s 91 of the Real
Estate Agents Act 2008

BROUGHT BY

**COMPLAINTS ASSESSMENT
COMMITTEE 2106**

AGAINST

YANKAI PAUL PANG
Defendant

Hearing in Auckland on 13 December 2023

Tribunal:

D J Plunkett (Chair)
G J Denley (Member)
P N O'Connor (Member)

Appearances:

Counsel for the Committee:
The Defendant:

E Mok
No appearance

SUBJECT TO NON-PUBLICATION ORDER

DECISION
Dated 08 January 2024

INTRODUCTION

[1] Yankai Paul Pang was at the relevant time a licensed salesperson under the Real Estate Agents Act 2008 (the Act). It is alleged he acted in a transaction without having direct contact with the client and that he inserted the client's signature and an initial on documents himself.

[2] Mr Pang has been charged by Complaints Assessment Committee 2106 (the Committee) with misconduct under s 73(c)(iii) of the Act, in that his conduct consists of a wilful or reckless contravention of certain rules of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 (the Rules). The particulars of the charges (as amended at the hearing) are set out in the Schedule.

[3] On about 22 March 2023, the Committee referred the charges to the Tribunal.

[4] Mr Pang did not attend the hearing.

BACKGROUND

[5] Mr Pang's salesperson licence has been voluntarily suspended since 2 August 2022. At the relevant time, he was contracted to Megan Jaffe Real Estate Limited. He worked from the Orakei branch, trading as Ray White Orakei (the agency).

[6] The charges concern a property in Remuera, Auckland (the property). It was owned by DA (the vendor), who lived overseas. Mr Pang was approached by BD (the vendor's daughter) to sell the property.

[7] On 11 June 2021, Mr Pang asked the vendor's daughter by WeChat text whether a lawyer had been contacted to set up a power of attorney so the daughter could sign for her. There followed a number of brief discussions between Mr Pang and the daughter. They met in person at least once. The request was refused by the daughter who said her mother was too busy.¹ The daughter told Mr Pang that her mother wanted her to deal with the campaign.

[8] Mr Pang therefore set about obtaining the vendor's digital signature and initials. He asked the daughter on 11, 12 and 14 June 2021. Mr Pang wondered whether the daughter had talked to her mother at all, so he asked the vendor's personal assistant by WeChat text to obtain the signatures and initials from the vendor.² The assistant replied

¹ Email (19 November 2021) Mr Pang to John Campbell and Jane Horgan with attached texts and translations, Authority's bundle at 36–38 (exhibit to Mr Callahan's affidavit).

² Email (19 November 2021), above n 1 at 37.

that the vendor said it would be easier for the daughter to obtain the signature and initials from her mother. It was not until 27 June that Mr Pang received the vendor's digital signature and an initial from the daughter.³

Agency agreement signed

[9] An agency (listing) agreement for the sale of the property was entered into on about 14 July 2021. The vendor's signature was inserted electronically by Mr Pang and dated 8 July 2021.⁴ He handwrote the initial "Z" on behalf of the vendor on each page. This included handwriting the initial against each of the "Client Acknowledgements" at cl 16 of the agreement (acknowledging that the licensee had recommended legal and other advice, that he had given the client a copy of the approved guide, that she had been made aware of the complaints procedure and the like). It was signed on 14 July 2021 by Ms Jaffe on behalf of the agency. The licensee conducting the sale was identified as Mr Pang.

[10] The vendor's signature was also inserted electronically on the property checklist by Mr Pang and dated 8 July 2021. He handwrote the initial "Z" on behalf of the vendor on the other page of the checklist.

[11] Marketing of the property by Mr Pang commenced in late July 2021. The auction was scheduled for 19 August 2021.

Pre-auction offer

[12] An offer to purchase the property was signed by a prospective purchaser on 10 August 2021. The vendor's electronic signature on the Pre-Auction Offer-Vendor's Form was inserted by Mr Pang and dated 10 August 2021. The vendor's signature on the Memorandum of Contract (10 August 2021) was inserted electronically by Mr Pang. He handwrote the vendor's initial on the memorandum and on the Particulars and Conditions of Sale of Real Estate by Auction.

[13] The offer brought the auction forward to 12 August 2021.

[14] On 12 August 2021, the property was withdrawn shortly before the auction was due to commence. According to Mr Pang, this was because the daughter's father, who was not an owner, did not want to sell as he believed the property had been undervalued.

³ Email (19 November 2021), above n 1 at 38; email (30 April 2022) Mr Pang to Authority, Authority's bundle at 87.

⁴ Email (30 April 2022), above n 3.

[15] Following a discussion on 16 November 2021 between Mr Pang and the directors of the agency as to why the vendor had changed her mind about the auction, the agency terminated his employment contract on 23 November 2021.

Complaint to the Authority

[16] On 23 November 2021, the agency notified the Real Estate Agents Authority (the Authority) of Mr Pang's conduct. It was alleged he had digitally inserted the vendor's signature and initials on an agency agreement and a pre-auction offer. He obtained them from the vendor's daughter and did not communicate directly with the vendor.

[17] Mr Pang provided an explanation to the Authority on 18 February 2022. He admitted not having contact with the vendor directly. She was based in China and he was approached by her daughter, a very close friend. He asked for the vendor's contact information but the daughter was quite against it as the vendor was very busy. The vendor appointed her personal assistant to deal with the listing. He totally understood that he had made a big mistake and that he needed to contact the vendor directly, but his intention was to help his client.

[18] Mr Pang provided a further explanation to the Authority on 30 April 2022. He said he had clear instructions to list the property and the vendor was very co-operative. He had been approached by the vendor's daughter, but she refused to give him her mother's direct contact information. She said her mother was very busy and it was very hard to get in touch with her. The daughter said she would be the person who dealt with the campaign. Later, the vendor appointed her personal assistant to deal with documentation. Mr Pang accepted that he had added the vendor's electronic signature to the listing agreement. On 10 August 2021 when he received the pre-auction offer, he talked to the daughter by phone. She called the vendor and phoned him back to report acceptance of the offer. They gave him permission to finish the documents.

[19] A lengthy narrative was sent to the Authority on 12 May 2022 by Megan Jaffe, the principal of the agency. It is noted by the Tribunal that Ms Jaffe states that vendors are permitted to sign listing agreements electronically, but the agency's policies and procedures require the vendor to sign the agency agreement. If Mr Pang had disclosed that he had inserted it himself without speaking directly to the vendor, the listing would not have been approved. It is the same with the pre-auction offer. If he had disclosed he had taken instructions from the daughter and the vendor had not signed the documents, they would not have proceeded. They would have required the vendor to execute the documents, or grant a power of attorney to another person to do so.

Charges filed in the Tribunal

[20] The Committee laid the charges in the Tribunal on about 22 March 2023.

[21] A Response to Charge (19 April 2023) was filed by Mr Pang. He denies charge 1, but he does not respond to the other charges. He says some of the particulars of charge 1 are incorrect. According to Mr Pang, he had full authority from the vendor to sell the property and to use her signature. She was aware of everything. The vendor was super busy, so the daughter was the main contact. Every time he used her signature, he had her permission by phone. He stated that he did not wish to be heard in relation to the charges.

[22] Mr Pang did not make himself available for a procedural telephone conference, nor did he file any reply to the Committee's memorandum (15 May 2023) on the proposed procedure. A Minute was issued by the Tribunal on 30 May 2023 setting procedural directions.

Evidence given to the Tribunal

[23] The Committee produced the following sworn evidence from witnesses. As Mr Pang was not present, the witnesses were excused from attending.

Rangi Kahu Callahan

[24] There is an affidavit (31 July 2023) from Mr Callahan, a senior investigator with the Authority. He sets out the steps taken in the investigation of the complaint and formally produces the communications and documentary evidence.

Johann Kirk Nel Campbell

[25] There is an affidavit (25 July 2023) from Mr Campbell, a licensed salesperson and director of the company trading as Ray White Orakei. On about 16 November 2021, he and Ms Horgan had a conference call with Mr Pang. It concerned why the vendor had changed her mind about the auction. Mr Pang confirmed that he did not use the digital initials, but instead he wrote these himself on the documents. He also confirmed that he had inserted the vendor's signature into the documents. He admitted that he had not been dealing directly with the vendor.

Jane Mary Horgan

[26] There is an affidavit (25 July 2023) from Ms Horgan, a licensed agent and director of the company trading as Ray White Orakei. She and Mr Campbell managed and supervised Mr Pang's day-to-day work. She was responsible for reviewing and approving all his legal documents. She did not have any concerns about his competence or integrity prior to this transaction.

[27] At the time Ms Horgan reviewed the documents, Mr Pang did not tell her he was taking instructions from the vendor's daughter only. Nor did he tell her he had written the initials himself on the agency agreement, rather than using the electronic initials. On 11 August 2021, Ms Horgan asked Mr Pang if she could speak to the vendor to ensure she understood the implications of accepting the offer. He told her the vendor did not speak English, but Ms Horgan could speak to the daughter. Ms Horgan did speak to the daughter who said Mr Pang had explained it and her mother was very happy. Ms Horgan had no reason to suspect Mr Pang was not communicating directly with the vendor.

[28] On 16 November 2021, Ms Horgan and Mr Campbell had a conference call with Mr Pang. He eventually admitted he had not been dealing directly with the vendor in regard to the pre-auction offer. Mr Pang also ultimately confirmed that he did not use the electronic initials, instead writing them himself. He also confirmed inserting the vendor's digital signature.

Craig Andrew Gibbon

[29] There is an affidavit (26 July 2023) from Mr Gibbon, the anti-money laundering compliance officer for the agency. He states that digital signatures are acceptable, though they do not affect the need to deal with vendors and obtain instructions directly. In no circumstances is a salesperson permitted to sign an agency agreement on behalf of a client, whether using digital signatures or otherwise. They may only be inserted by the client. When Mr Gibbon approved the documents for the property, Mr Pang did not inform him that the digital signature had come from the daughter, or that he had inserted it without having spoken to the vendor directly. If he had disclosed this, the listing checklist would not have been approved.

Megan Jaffe

[30] There is an affidavit (28 July 2023) from Ms Jaffe, a licensed agent and principal of the agency. Mr Pang had been engaged by the agency since 12 October 2020. She

provided supervision and management for Mr Pang. She authorised the agency agreement, though she did not have any direct supervision of Mr Pang in relation to this transaction. Mr Gibbon reported the matter to the Authority on her behalf.

Mr Pang

[31] Mr Pang produced no evidence and did not appear at the hearing.

CHARGES

Jurisdiction and principles

[32] The Committee has brought a charge of misconduct against Mr Pang. Misconduct is defined in the Act:

73 Misconduct

For the purposes of this Act, a licensee is guilty of misconduct if the licensee's conduct—

- (a) would reasonably be regarded by agents of good standing, or reasonable members of the public, as disgraceful; or
- (b) constitutes seriously incompetent or seriously negligent real estate agency work; or
- (c) consists of a wilful or reckless contravention of—
 - (i) this Act; or
 - (ii) other Acts that apply to the conduct of licensees; or
 - (iii) regulations or rules made under this Act; or
- (d) constitutes an offence for which the licensee has been convicted, being an offence that reflects adversely on the licensee's fitness to be a licensee.

[33] The Tribunal may regulate its procedures as it thinks fit, though it is subject to the rules of natural justice.⁵

[34] The Tribunal may receive any document or information that may, in its opinion, assist it, whether or not that document or information would be admissible in a court.⁶ Subject to that and other matters, the Evidence Act 2006 applies.⁷

⁵ Real Estate Agents Act 2008, s 105.

⁶ Section 109(1).

⁷ Section 109(4).

[35] It is the civil standard of proof, the balance of probabilities, that is applicable.⁸ However, the quality of the evidence required to meet that standard may differ in cogency, depending on the gravity of the charges.⁹

[36] The charge of misconduct is framed as wilful or reckless contravention of certain rules under s 73(c)(iii) of the Act. This was considered by the Tribunal in *Clark*, where it approved the principles set out in the Australian case of *Zaitman*.¹⁰

[51] But in this instance Parliament has used both the words “wilful” and “reckless” in the definition of “misconduct” and so some meaning must be given to each. In those circumstances, and in view especially of what was said by Hardie, J in *Hodgekiss* in a not dissimilar legislative context, the word “wilful” in para(a) of the definition in s2A should surely be taken to make it an offence for a solicitor, who knows that it is a contravention of the Act (or the rules or regulations, as the case may be) for him to do or to fail to do some particular thing, intentionally to do that thing or fail or omit to do it. On the other hand, the word “reckless” should be taken as requiring no more than that the solicitor be shown to have acted, not in the knowledge just described, but with reckless indifference, not caring whether what he does, or fails or omits to do (as the case may be) is a contravention of the Act, the rules or the regulations. The solicitor must, I think, have appreciated the possibility that his conduct (whether it be act or omission) might amount to a breach of the Act, the rules or the regulations; for otherwise it is difficult to say that he acted with the necessary reckless indifference. To put that in another way, the solicitor must, I think, be shown to have known of the risk and to have intended to take that risk.

[52] It is implicit in what I have just said that, while the solicitor, who does not KNOWINGLY act in contravention, must be shown to have foreseen that what he was doing MIGHT amount to a relevant contravention, there is no need to go further and establish that the solicitor foresaw the contravention as “probable”; it is enough that he foresaw it as “possible” and then went ahead without checking. That was how the relevant concept of “recklessness” was approached by Bramwell, J in *Lewis*, as drawn upon by Kitto, J in *Neale Edwards*, and I think it must be so here too. Iannella demonstrates that the word “wilful” or “wilfully” will take its meaning from the context of the particular statute in which it falls to be considered; and it is surely the same with “reckless” or “recklessly”. In the context of this legislation, and having regard to its purpose and the nature of the disciplinary offences created, and especially the professional duty which I think is cast upon solicitors to keep abreast of the rules – at the very least in a general way, which is all that has to be considered in the case of this appellant – it will be enough if the solicitor (if his conduct is not in “wilful contravention”) is shown to have been aware of the possibility that what he was doing or failing to do might be a contravention and then to have proceeded with reckless indifference as to whether it was so or not. Indeed, to conclude otherwise would all too obviously put a premium on ignorance.

⁸ Section 110.

⁹ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [101]–[102] and [112].

¹⁰ *Zaitman v Law Institute of Victoria* BC9401319 (9 December 1994) (VSC) per Phillips J, approved in *Real Estate Agents Authority (CAC 20004) v Clark* [2013] NZREADT 62 at [70]–[71].

[37] It is also useful to consider the principles set out by the High Court in *Brown* as to the gravity of misconduct in s 73 generally:¹¹

[21] The Tribunal's finding was grounded on s 73(b). It concluded that Mrs Brown's conduct constituted "seriously negligent real estate agency work". It is worth observing that s 73 clearly focuses on actions which are at the upper end of misconduct by licensees. The four discrete subsections focus on conduct which is "disgraceful", an adjective which carries with it a high degree of opprobrium; incompetent or negligent conduct which must justify the adverb "seriously"; contravention of statutory provisions, which must be "wilful or reckless"; and an offence (clearly a criminal offence) which must reflect "adversely" on a licensee's fitness. Given s 73's spread over this range of seriousness, the Tribunal was obliged to consider whether Mrs Brown's conduct reached that level. It is also pertinent to observe that the types of misconduct specified in s 73 are qualitatively different. One would not expect an identical legal threshold to apply to all. Conduct which a reasonable member of the public would regard as disgraceful would obviously be qualitatively different from serious incompetence or wilful contravention of the Act.

[22] This touchstone of seriousness is reinforced when one examines the preceding section, s 72, which provides:

...

[23] A comparison with the subsections of s 73 is instructive. Conduct must fall short of the standard a reasonable member of the public might expect (no reference to agents of good standing, regarding conduct as being "disgraceful"). There must be mere contravention of the Act rather than qualifying conduct which is "wilful or reckless". The incompetence or negligence need not be serious. And subs (d) returns to one of the limbs of s 73(a) – the conduct must be regarded as unacceptable by agents of good standing, rather than disgraceful.

[footnotes omitted]

[38] The Committee alleges the wilful or reckless contravention of any or all of the following rules:

5 Standards of professional competence

5.1 A licensee must exercise skill, care, competence, and diligence at all times when carrying out real estate agency work.

...

6 Standards of professional conduct

...

6.3 A licensee must not engage in any conduct likely to bring the industry into disrepute.

¹¹ *Brown v The Real Estate Agents Authority* [2013] NZHC 3309.

...

9 Client and customer care

General

...

- 9.6 Unless authorised by a client, through an agency agreement, a licensee must not offer or market any land or business, including by putting details on any website or by placing a sign on the property.

Agency agreements and contractual documents

- 9.7 Before a prospective client, client, or customer signs an agency agreement, a sale and purchase agreement, or other contractual document, a licensee must—
- (a) recommend that the person seek legal advice; and
 - (b) ensure that the person is aware that he or she can, and may need to, seek technical or other advice and information; and
 - (c) allow that person a reasonable opportunity to obtain the advice referred to in paragraphs (a) and (b).

...

12 Information about complaints

...

- 12.2 A licensee must ensure that prospective clients and customers are aware of these procedures before they enter into any contractual agreements.
- 12.3 A licensee must also ensure that prospective clients, clients, and customers are aware that they may access the Authority's complaints process without first using the in-house procedures; and that any use of the in-house procedures does not preclude their making a complaint to the Authority.

...

[39] Rule 6.3 was considered by the Tribunal in *Goundar* where it found, relying on an earlier decision, that a breach of r 6.3 would be justified by conduct which:¹²

... if known by the public generally, would lead them to think that licensees should not condone it or find it to be acceptable. Acceptance that such conduct is acceptable would ... tend to lower the standing and reputation of the industry.

¹² *Complaints Assessment Committee 403 v Goundar* [2017] NZREADT 52 at [83].

ASSESSMENT

[40] The Tribunal is satisfied that Mr Pang had notice of the hearing and chose not to attend. He has not defended the charges against him. Furthermore, Mr Pang has made the following admissions which prove the primary charge:

1. Mr Pang had no direct contact with the vendor at any time.¹³
2. Mr Pang inserted the vendor's electronic signature on the agency agreement, property checklist, Pre-Auction Offer-Vendor's Form, Memorandum of Contract and the Pre-Purchase & Pre-Settlement Inspection Checklist.¹⁴
3. Mr Pang handwrote the vendor's initial "Z" on the agency agreement, property checklist, Memorandum of Contract and the Particulars and Conditions of Sale of Real Estate by Auction.¹⁵

[41] The evidence produced to the Tribunal establishes that Mr Pang conducted the transaction without any direct communication with his client, the vendor. All of his communications were with the vendor's daughter and the vendor's personal assistant, neither of whom was an owner nor had a power of attorney from the vendor authorising the sale. The instructions to sell, the appointment of the agency and of Mr Pang, the price range and the acceptance of the pre-auction offer all came from the vendor's daughter. Mr Pang marketed and attempted to sell the property without authority from the owner.

[42] We agree with Ms Mok that the agency agreement is not valid. The appointment of the agency was by the daughter, but she had no such authority. Even if the vendor had given her daughter verbal approval, as Mr Pang claims, the latter had no power of attorney, so she was not legally entitled to engage the agency or Mr Pang, nor approve any subsequent activity in the purported transaction.

[43] In addition, it was Mr Pang who inserted the vendor's electronic signature on this agreement and who personally wrote the vendor's initial. The daughter could not

¹³ Email (18 February 2022) Mr Pang to the Authority, Authority's bundle at 71; affidavit Mr Campbell (25 July 2023) at [2.2], Authority's bundle at 12; affidavit Ms Horgan (25 July 2023) at [3.18], Authority's bundle at 18.

¹⁴ Email (30 April 2022) Mr Pang to the Authority, Authority's bundle at 87; Response to Charge (19 April 2023), Authority's bundle at 6; affidavit Mr Campbell (25 July 2023) at [2.4], Authority's bundle at 12; affidavit Ms Horgan (25 July 2023) at [3.20], Authority's bundle at 18.

¹⁵ Affidavit Mr Campbell (25 July 2023) at [2.3], Authority's bundle at 12; affidavit Ms Horgan (25 July 2023) at [3.19], Authority's bundle at 18.

authorise this as she had no power of attorney and there is no evidence she even knew that he personally wrote the initial as she had provided him with an electronic initial. Mr Pang had no authority from the vendor to use her signature or handwrite her initial.

[44] We find that Mr Pang marketed the property without a valid agency agreement. This was a breach of r 9.6 of the Rules.

[45] Given that Mr Pang had no direct contact with the vendor and manually wrote the initial against each of the “Client Acknowledgements” (cl 16 of the agency agreement), it is proven that he breached his obligations in rr 9.7(a), 9.7(b), 9.7(c), 12.2 and 12.3. Even if Mr Pang had given the required advice and information to the daughter and she promised to pass it on to her mother, this would not satisfy his obligation to give it directly to the vendor as his client, or to someone with a power of attorney from his client.

[46] It is self-evident that Mr Pang did not exercise the required level of skill, care, competence and diligence in conducting this transaction. This is a breach of r 5.1.

[47] The obligation to communicate directly with the client or a person holding a power of attorney is critical to the professional duties of a licensee. It is fundamental to the work of a licensee that there is a valid agency agreement and that the required advice is given to the client.¹⁶

[48] We find that Mr Pang’s conduct would not be condoned by the public. If his conduct was regarded as acceptable, it would lower the standing and reputation of the industry. He has engaged in conduct likely to bring the industry into disrepute. This is a breach by Mr Pang of r 6.3.

[49] We further find that Mr Pang’s conduct was wilful. At the time, he knew it was wrongful and contravened his professional obligations:

1. Mr Pang knew prior to entering into the agency agreement that the daughter was required to have a power of attorney from the vendor so she (the daughter) could sign for the vendor.¹⁷ He was aware she had no power of attorney, which is why he obtained the electronic signature and initial.
2. Mr Pang even doubted the daughter’s authority to sell. At the time the daughter engaged him, he wondered whether she had talked to her mother,

¹⁶ Real Estate Agents Act, s 126; *Soft Technology JR Ltd v Jones Lang Lasalle Ltd* [2022] NZCA 353 at [39] and [45].

¹⁷ Text (11 June 2021) Mr Pang to the daughter, Authority’s bundle at 509.

so he asked the personal assistant to help.¹⁸ Such doubt would have led a professional licensee to insist on obtaining authority direct from the vendor.

3. Mr Pang sought to cover up his wrongdoing in his communications with Ms Horgan throughout the transaction and initially in his explanation to the directors on 16 November 2021.¹⁹

At no time prior to 16 November did Mr Pang inform Ms Horgan that he was dealing only with the daughter. He lied to Ms Horgan, specifically telling her he had spoken to the vendor.²⁰ Nor did he tell her he had inserted the electronic signature on the documents and personally written the initial.

Then at the telephone conference on 16 November, he did not admit such conduct until Ms Horgan placed the electronic initial and handwritten initial side by side and sent it by text to him during the call.²¹ Indeed, at first he denied writing the initial himself. He eventually admitted dealing only with the daughter and inserting the signature and initial.

4. Mr Pang declined to arrange for Ms Horgan to speak directly to the vendor to ensure she understood the implications of accepting the offer. He said she did not speak English. He could have arranged a conference call, with Mr Pang or the daughter acting as an informal interpreter.
5. Mr Pang would have been aware that the agency's policy required vendors to sign agency agreements.²² It is not credible that he believed, if he did, that it was appropriate for him to insert a party's electronic signature. It is even more improbable that he could have believed it appropriate to handwrite a client's initial. Such conduct is highly suspicious and he has chosen not to explain it to the Tribunal. It is equally highly improbable that he thought it appropriate, if indeed he did, to personally acknowledge each item of advice the agency agreement required him to give the vendor.

¹⁸ Email (19 November 2021), above n 1 at 37.

¹⁹ Affidavit Ms Horgan (25 July 2023) at [3.6], [3.11], [3.13] and [3.18]–[3.20], Authority's bundle at 16–18; affidavit Mr Campbell (25 July 2023) at [2.2]–[2.4], Authority's bundle at 12, Ms Horgan's interview with the Authority's investigator (12 September 2022), Authority's bundle at 532.

²⁰ Email (11 August 2021) Mr Pang to Ms Horgan, Authority's bundle at 188.

²¹ See Ms Horgan's side by side photost, Authority's bundle at 494.

²² Email (12 May 2022) Ms Jaffe to the Authority at [10], Authority's bundle at 97; Agency's Policies and Procedures (signed by Mr Pang on 12 October 2020), Authority's bundle at 266 and 282.

6. In his Response to Charge (19 April 2023) filed in the Tribunal, Mr Pang falsely claimed he had phone calls with the vendor. His initial response to the charges mirrored his reluctance to admit his conduct when asked by his managers for an explanation on 16 November 2021. He lied, seeking to conceal his wrongdoing. It is not the response of a person who has made an honest mistake.
7. We accept Ms Mok's submission that it is clear from the nature of Mr Pang's conduct that he must have been alive to it being contrary to the agency's policy and contrary to what licensees fundamentally do every day.

Conclusion

[50] Mr Pang has breached rr 5.1, 6.3, 9.6, 9.7, 12.2 and 12.3 of the Rules. His conduct was wilful. It amounts to misconduct under s 73(c)(iii) of the Act.

[51] We commend the agency for the thoroughness of its policies and procedures, and the diligence of its investigation culminating in reporting Mr Pang to the Authority. It is apparent that throughout the transaction, Mr Pang misled the agency.

ORDERS

[52] The charge of misconduct (wilful or reckless contravention of the Rules) is upheld.

[53] The penalty orders will be determined on the papers. In light of the gravity of the wrongdoing and Mr Pang's non-appearance at the hearing, the parties are invited to make submissions on whether the Tribunal should cancel Mr Pang's licence and/or make an order under s 110(2)(e) of the Act.

[54] The Committee's written submissions on penalty orders are to be filed and served by **30 January 2024**. Mr Pang's submissions are to be filed and served by **20 February 2024**.

[55] 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

[56] Having regard to the privacy of the vendor and her daughter as well as the interests of the public in the transparency of the Tribunal, it is appropriate to order

publication of this decision without identifying the vendor or the vendor's daughter, but naming the licensee.²³ We see no reason to prohibit the naming of the agency, its directors and managers or the other witnesses.

D J Plunkett
Chair

G J Denley
Member

P N O'Connor
Member

²³ Real Estate Agent's Act, s 108.

SCHEDULE

Charge 1

Complaints Assessment Committee 2106 (Committee) charges Yankai (Paul) Pang (defendant) with misconduct under section 73(c)(iii) of the Real Estate Agents Act 2008 (Act), in that his conduct consists of a wilful or reckless contravention of any or all of rr 5.1, 6.3, 9.6, 9.7, 12.2, and/or 12.3 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 (Rules).

Particulars:

1. The defendant was a licensed salesperson under the Act at the time of the relevant conduct. His licence is currently voluntarily suspended.
2. At the time of the relevant conduct, the defendant was employed by Megan Jaffe Real Estate Limited trading as Ray White Orakei (the Agency).
3. In or around May 2021, the defendant was approached by the daughter of DA. DA's daughter wanted the defendant to help sell DA's property, located at [address] Remuera, Auckland (the Property). DA lived in China.
4. On or around 11 June 2021, the defendant asked DA's daughter on the messaging application, WeChat, whether DA had signed a power of attorney authorising DA's daughter to sign contractual documents on DA's behalf. DA's daughter responded saying that DA had not signed a power of attorney and indicating DA did not have a lawyer.
5. The defendant approached a lawyer, following a request from DA's daughter for help engaging a New Zealand-based lawyer.
6. On or around 27 June 2021, DA's daughter provided the defendant with a copy of DA's electronic signature and initials.
7. At no stage did the defendant obtain permission directly from DA to use her electronic signature or initials. Nor did the defendant have any direct contact with DA at any stage in relation to the proposed marketing and sale of her Property.
8. On or around 8 July 2021, the defendant inserted DA's electronic signature into an agency agreement purporting to authorise the Agency to market and sell the Property on DA's behalf, a Property Checklist, and a Pre-Purchase And Pre-Settlement Inspection Checklist.
9. The defendant proceeded to market the Property without a valid agency agreement, contrary to r 9.6 of the Rules.
10. On or around 10 August 2021, the defendant inserted DA's electronic signature into a Pre-Auction Offer – Vendor's Form, and a Particulars and Conditions of Sale of Real Estate by Auction form.

11. Between around 27 June 2021 and 10 August 2021, the defendant initialled the agency agreement, the Property Checklist, and the Particulars and Conditions of Sale of Real Estate by Auction himself. These initials purported to be DA's initials (but differed from the initials the defendant had received from the vendor's daughter).
12. The defendant did not obtain direct authority from DA to sign or initial the documents referred to above at paragraphs 8, 10, and 11 on her behalf.
13. By inserting DA's signature and initials purporting to be DA into the aforementioned documents (including contractual documents), despite not having directly communicated with DA or directly confirmed he had her permission to do so, the defendant breached rr 5.1 and/or 6.3 of the Rules.
14. Because the defendant had no direct contact with DA at any time, he also failed to ensure DA was aware of her ability to obtain legal and other professional advice and to access the relevant complaints processes, contrary to rr 9.7, 12.2, and/or 12.3 of the Rules.

Alternative charge to Charge 1

In the alternative to Charge 1, the Committee charges the defendant with misconduct under section 73(b) of the Act, in that his conduct (as outlined above in respect of Charge 1) constitutes seriously incompetent or seriously negligent real estate agency work.

Further alternative charge

In the further alternative, in the event that the Tribunal is not satisfied that the defendant is guilty of misconduct (under either ss 73(c)(iii) or 73(b)), but is satisfied that he has engaged in unsatisfactory conduct, under s 110(4) of the Act the Tribunal may make any of the orders that the Committee may make under s 93 of the Act.