

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2018] NZREADT 42

READT 044/17

IN THE MATTER OF

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

BETWEEN

SHERRYL DORAN
Appellant

AND

THE REAL ESTATE AGENTS
AUTHORITY (CAC 413)
First Respondent

AND

STUART FLEMING
Second Respondent

On the papers:

Tribunal:

Hon P J Andrews, Chairperson
Ms N Dangen, Member
Ms N O'Connor, Member

Submissions received from:

Ms Doran, Appellant
Mr M Mortimer, on behalf of the First
Respondent
Mr R Hargreaves, on behalf of the Second
Respondent

Date of Decision:

21 August 2018

DECISION OF THE TRIBUNAL

Introduction

[1] The appellant, Mrs Sherryl Doran (née Lindsay) has appealed against the decision of Complaints Assessment Committee 413 (“the Committee”), dated 29 November 2017, in which it decided not to inquire into her complaint against the Second Respondent, Mr Fleming (“the Committee’s C22810 decision”).¹ The reasons given by the Committee for not inquiring into Mrs Doran’s complaint were that the matters complained of had already been dealt with by the Authority and the allegations made by her were lacking in evidence, were frivolous or vexatious and not made in good faith.²

[2] The parties have agreed that the appeal is to be determined on the papers. The Tribunal has received and considered the Committee’s C22810 decision, copies of the documents and other material provided to the Committee, and submissions by or on behalf of the parties.

Background

[3] It is necessary in this case to set out the background to Mrs Doran’s complaint, and the Committee’s C22810 decision, in some detail.

[4] Mrs Doran married David Doran on 24 May 2014. David Doran is the son of Leonard and Joyce Doran (“Mr and Mrs Doran Snr”) who were the owners of a property at 1/43 Wikiriwhi Crescent, Palmerston North (“the property”). Although the events set out below occurred before Mrs Doran’s marriage, we will refer to her in this decision as “Mrs Doran”. We will refer to David Doran as “Mr Doran”.

[5] Mrs Doran’s complaint arose out of the sale of the property. It was listed for sale with Real Estate House (Manawatu) Ltd, trading as Ray White Palmerston North (“the Agency”) on 5 March 2012, and sold on 6 July 2012. The second respondent, Stuart Fleming, was at all material times the manager of the Agency.

¹ Complaint No C22810, re Stuart Fleming: Decision not to inquire, 29 November 2017.

² Committee’s C22810 decision, at paragraph 3.1.

[6] The Agreement for Sale and Purchase for the property (“the ASP”), dated 15 June 2012, was signed by Mrs Doran Snr, and by Beverley Rochelle Penney (who is recorded on the sale agreement as “Attorney for L J Doran”).

[7] Mrs Penney is the daughter of Mr and Mrs Doran Snr, and is David Doran’s sister. She was employed by the Agency as Administration Manager. At the time she signed the ASP Mrs Penney held an Enduring Power of Attorney dated 24 December 2006 (“the EPA”), in which Mr Doran Snr gave her “general authority to act on my behalf”... “in relation to the whole of my property”. He specified that the authority given by the EPA was intended to have effect only if he became mentally incapable. There is no dispute that at the time Mrs Penney signed the ASP, Mr Doran Snr was mentally incapable.

[8] On 18 and 19 March 2012, Mrs Doran made enquiries as to purchasing the property by way of email communications with the listing salesperson, Ms Elliott. On 19 March 2012, Mr Fleming sent Mrs Doran the following email, addressed to her personal email address:

Dear Sher³

I have read your messages sent to Lyndsay Elliott.

Thank you for your enquiry and interest in the property at Wikiriwhi Crescent. We are required by law to disclose information to customers information about the property which may be material or important when a purchase is being considered. Our office accountant Bev Penney’s, your parents (your parents) are owners of the property for whom Bev has power of attorney. It is under those instructions we marketing the property.

Under the Real Estate Agents Act 2008 we can only present written and signed offers to the Vendor. Under the current circumstances if you wish to make an offer under the above conditions please make your offer with me directly. If I can be of further help please don’t hesitate to contact me.

Yours faithfully

Stu Fleming (Licensee Agent)

[9] On 20 March 2012 Mr Fleming sent a second email to Mrs Doran. It was sent to her personal email address, but forwarded later the same day to Mr Doran, with a request that he pass it on to Mrs Doran, as Mr Fleming had not succeeded in sending it to her.

³ Mrs Doran was frequently addressed as “Sher”.

Dear Sher

Thank you for your enquiry about the above property.

I have read your correspondence with Lyndsey and have prepared an offer in accordance with your instructions.

Prior to your signing the attached offer there are several things you should be aware of:

- 1) As you have not physically viewed the property, I encourage you to seek independent legal advice.
- 2) I need to ensure you are aware the Vendor, Power of Attorney (Bev Penney) and your fiancé are related and that Bev Penney is an employee of my Company, through which the house is being sold.
- 3) We are obliged by law to disclose any information which may be material to a Purchaser when an offer is being considered. The Vendor has told us that there have been issues in the roof which they have attended to. You will need to make your own judgment as the certainty of that with your building report.
- 4) Also you should be aware the title is a Fee Simple (freehold) Cross Lease. The short explanation of this is the owners of the property (in this case two) own the whole piece of land on which the townhouses are built and lease each other the buildings for a period of time, usually 999 years. Along with that, basically, if you want to make any alteration to your dwelling or on your exclusive area you require permission from the other owner and if you have permission will need to put this alteration on the Flats Plan which will from a legal point of view cost a minimum of \$3,000 to \$5,000 plus the cost of your addition. I encourage you to seek further independent advice regarding the title so you fully understand it.
- 5) I attach a copy of the rates.
- 6) The property is being marketed at \$138,000.
- 7) I will not comment on the price the Vendor has paid for the property. It is not my concern. It is my duty, by law, to obtain the best price for my Client while treating the Customer fairly.
- 8) You are required by law to read the following articles prior to signing the attached agreement. These can be seen by following the links [REAA guide and Agency complaints]

Please treat me as your only point of contact with regards to any future correspondence relating to the sale of the property. I am happy to provide any other information you may need and I am legally able to give you throughout this process.

[10] On 21 March 2012 Mr Fleming sent Mrs Doran a further email, asking if she intended to make an offer for the property. She did not respond to the email, and did not make an offer to buy the property.

[11] On 4 July 2012 (two days before settlement of the sale of the property), Mrs Penney signed a "Certificate of non-revocation and non-suspension of enduring power of attorney", in which she certified that "on 24 December 2012" her father had granted

her an enduring power of attorney to act in relation to his property, she had not received notice of any event revoking her authority to act under the enduring power of attorney, and she had not received written notice from Mr Doran Snr suspending her authority to act under the enduring power of attorney.

[12] Mrs Doran Snr died on 26 June 2016. Mr Doran Snr died on 14 August 2017.

Complaints

Complaint 16559

[13] On 26 August 2016 Mr Doran made a complaint to the Authority against Mrs Penney and Mr Fleming (“Complaint 16559”). He summarised his complaint as follows:

Improper and illegal use of a questionable Enduring Power of Attorney.

The Enduring Power of Attorney was never updated because Dad was mentally incapable at the time of making the E.P.A, Beverley Penney can not prove that Leonard was mentally incapable at the time.

Completion of a Disclosure Document.

Misconduct.

Fraud.

[14] On 28 September 2016 an Early Resolution Facilitator for the Authority advised Mr Doran of the Authority’s decision that the most effective way of dealing with his complaint was “to remind Stu Fleming of their obligations as a licensee”. The Authority also advised Mr Doran that it could not consider a complaint against Mrs Penney as she was not a licensee at the time of the alleged conduct, and not performing “real estate agency work” as defined in the Act. The Authority attached a copy of a letter to Mr Fleming in which it recommended that he review his practices to ensure he met his obligations as a licensee.

[15] Mr Doran asked the Authority to reconsider his complaint. In a letter to him dated 14 October 2016, the early resolution team leader advised him that she was satisfied with the Authority’s initial response to his complaint. Annexed to that letter were a copy of s 136 of the Act and (marked “Appendix Two”) a document provided

to the Authority by Mr Fleming, described in the Authority's letter as "a copy of the written disclosure he made to the potential purchasers". We will refer to this document as "Appendix Two". "Appendix Two" was headed "Email from Stu Fleming to potential purchasers", and was a copy of the 19 March 2012 email from Mr Fleming to Mrs Doran (set out at paragraph [8], above), with some wording blanked out:

From: Stu Fleming [stu.fleming@raywhite.com]
Sent: Monday 19 March 2012 10.15 pm
To: [BLANKED OUT]
Subject: Enquiry/Wikiriwhi Crescent

Dear [BLANKED OUT]

I have read your messages sent to Lyndsay Elliott.

Thank you for your enquiry and interest in the property at Wikiriwhi Crescent. We are required by law to disclose information to customers information about the property which may be material or important when a purchase is being considered. Our office accountant Bev Penney's, [BLANKED OUT] are owners of the property for whom Bev has power of attorney. It is under those instructions we marketing the property.

Under the Real Estate Agents Act 2008 we can only present written and signed offers to the Vendor. Under the current circumstances if you wish to make an offer under the above conditions please make your offer with me directly. If I can be of further help please don't hesitate to contact me.

Yours faithfully
Stu Fleming (Licensee Agent)

Complaint 17489

[16] On 17 October 2016 Mrs Doran made a complaint to the Authority against Mr Fleming ("Complaint 17489"). We set out the details of her complaint, in full:

Prior to a disclosure statement not a disclosure form being emailed to me at sherlindsay@lprimus.com.au I had made enquiries with Sales Person Lyndsey Elliott. At that stage I enquired about a conflict of interest. My intention was to purchase this home for myself and my future husband David Doran to live in and of course Joyce Doran if she wanted to.

This is the email that I received from Stu Fleming at my above email address from his Iphone

[Mrs Doran set out the email reproduced at paragraph [9], above, omitting the final sentence of the email]

This information is fraudulent, and misleading. It has cost me the right to purchase this property.

Beverley Penney was not a Power of Attorney for either Leonard Doran or Joyce Doran.

Beverley was an Enduring Power of Attorney for her mentally ill and dying father.

This is not a disclosure form but a statement in email form to me directly.

Leonard and Joyce did not sign the email and [were] not aware of the email.

This misleading and false information was the reason that I did not continue with the purchase at 43 Wikiriwhi Crescent Awapuni Palmerston North.

Stu Fleming licensee overtook the customer client / contact from Lindsey Elliott and misled me.

This had to be deliberate if he knew the Real Estate Agents Act 2008 that he quoted to me.

Stu Flemings fraudulent information and correspondence cost me the right to apply to purchase that property.

[17] Mrs Doran summarised her issues with Mr Fleming's conduct as follows:

Misconduct, misrepresenting the vendors, misinforming me, not completing a disclosure form and in the correct manner that is required by law. Preventing me from being able to purchase the property. Fraud.

I have also read the REAA code and think that these sections may pertain to the unethical and unlawful breach of legislation: Section 3: 3.1, 3.2; Section 6: 6.2, 6.4; Section 7: 7.1, 7.2, and 7.3; Section 9: 9.1, 9.2; Section 74, 78, 80, 81, 83, 88, 89, 91 and sections 134 – 137.

Consumer law and fair trading law and consumer and business practices may also need to be considered.

[18] In a letter emailed to Mrs Doran on 13 March 2017, the Authority advised her that a Complaints Assessment Committee had considered her complaint and decided to conduct an enquiry. The enquiry included seeking further information from Mrs Doran, and responses from Mr Fleming and Ms Elliott. On 8 May 2017, the Authority advised Mrs Doran that the investigation was complete and the case had been passed back to the Complaints Assessment Committee administrator.

[19] Complaints Assessment Committee 413 gave a decision on Complaint 17489 on 30 June 2017 ("the Committee's C17489 decision").⁴ We note that the Committee referred to both Mr David Doran and Mrs Sherryl Doran as being complainants.

[20] The Committee considered Complaint 17489 in two parts: Mr Fleming's statement in his email of 19 March 2012 that Mrs Penney's parents were "owners of the property for whom Bev has power of attorney", and whether Mr Fleming had failed

⁴ Complaint No C17489 re Stuart Fleming: Decision finding of unsatisfactory conduct – asking for submissions on orders. 30 June 2017.

to comply with an obligation under s 136 of the Act to give disclosure that his employee, Mrs Penney, might benefit financially from the sale transaction.

[21] With respect to the EPA, the Committee referred first to r 6.4 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 (“the Rules”), 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 to a client.

[22] The Committee observed that it was not disputed that Mr Fleming told Mrs Doran that Mrs Penney held a “power of attorney” on behalf of both Mr and Mrs Doran Snr, whereas she only held an EPA for Mr Doran Snr. The Committee went on to say that it was clear that Mr and Mrs Doran were aware of the true position within a matter of days. The Committee referred to the judgment of his Honour Justice Heath in the High Court in *Vosper v Real Estate Agents Authority* in which his Honour said that it seemed “self-evident that for a misrepresentation to be of the type to which rule 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.”⁵

[23] The Committee found that Mr Fleming:⁶

... acted honestly, holding the genuine but mistaken view that the Daughter held EPA on behalf of both vendors. Given the family dynamics and that the Daughter held an EPA on behalf of one Vendor, allowing her to significantly influence any transaction, there is no evidence to suggest that the Licensee’s misstatement of the true legal position was capable of having had any material adverse effect on the way in with the Complainants conducted themselves in their contemplated purchase of the Property. In those circumstances, the Committee does not accept that Rule 6.4 or any other rule was breached. Accordingly, we find there is no unsatisfactory conduct regarding this part of the complaint.

[24] On the issue of disclosure required by s 136 of the Act, the Committee recorded that in his “first email” to Mrs Doran, Mr Fleming recorded that “I need to ensure you are aware the Vendor, Power of Attorney (Bev Penney) and your fiancé are related and that Bev Penney is an employee of my Company, through which the house is being

⁵ *Vosper v Real Estate Agents Authority* [2017] NZHC 453, at paragraph [62].

⁶ Committee’s C17489 decision, at paragraph 3.6.

sold”. We note that this is in fact a quotation from Mr Fleming’s second email sent on 20 March (set out at paragraph [9], above), not his first email sent on 19 March. The Committee found that:⁷

The Licensee was clearly aware of an obligation to disclose under s 136 to the Complainants but his efforts fell short. While the Licensee disclosed that his employee was related to the Vendors he did not disclose that she might benefit financially from the transaction.

Rule 5.1 sets out that a Licensee must exercise skill, care, competence, and diligence when carrying out real estate agency work. On this occasion, he failed to exercise sufficient skill and care in ensuring full disclosure in terms of section 136 of the Act. We consider disclosure under section 136 is a fundamental competence on the part of a licensee and in failing to do so the Licensee breached Rule 5.1.

[25] The Committee also found that Mr Fleming had breached Rule 5.2, which provides that a licensee must have a sound knowledge of the Act, Regulations and Rules and other legislation relevant to real estate agency work, and if he had the requisite knowledge in the first instance he would not have breached section 136 of the Act.⁸

[26] The Committee concluded its decision on C14794 by saying that it:⁹

... does not see it as particularly mitigating that the Complainants obviously knew that the Daughter was the sister of Complainant Two and possibly knew that the Daughter might benefit financially from the resulting transaction. The Licensee’s omission meant that his conduct fell short of the standard that a member of the public is entitled to expect from a reasonably competent licensee and accordingly this was unsatisfactory conduct under s 72(a) and 72(b) of the Act.

[27] After receiving submissions from Mr and Mrs Doran and on behalf of Mr Fleming, the Committee ordered Mr Fleming to pay a fine of \$2,000.¹⁰ The Committee did not accept submissions by Mr and Mrs Doran that Mr Fleming should be censured or remanded, that all or some of the terms of an agreed settlement between them and Mr Fleming were to have effect, and that Mr Fleming should apologise to them, undergo training and education, refund commission paid by the vendors to the Agency, pay compensation to them of \$200,000, be fined \$20,000, and that he make his

⁷ At paragraph 3.10 and 3.11.

⁸ At paragraph 3.12.

⁹ At paragraph 3.13.

¹⁰ Committee’s penalty decision on C17489, 20 September 2017.

business available for inspection. The Committee also did not accept submissions on behalf of Mr Fleming that no penalty orders should be made.

[28] Paragraphs 4.1 and 4.2 of the Committee's C17489 decision set out the right of appeal to the Tribunal. Mr and Mrs Doran did not file an appeal to the Tribunal. Pursuant to s 111 (1) of the Act, the time within which they could do so expired on 19 October 2017.

Complaint C22810

[29] On 5 October 2017 Mrs Doran made a further complaint against Mr Fleming ("Complaint C22810").

[30] Mrs Doran set out the grounds of her complaint over ten typewritten pages in single spacing. She did not provide a summary of the complaint. The Authority's facilitator confirmed with her the key issues raised in the complaint. These were set out as:

1. The Licensee failed to correctly ensure the signature of Beverley Penney was affixed under the EPOA on behalf of the deceased Leonard John Doran.
2. The Licensee is guilty of fraud for failing to note the "tenants in common" on the Agreement for Sale and Purchase (ASP) and for acting for more than one party – Joyce Doran and Beverley Penney – in relation to the sale and purchase.
3. The Licensee failed to correctly disclose the beneficial interest to the vendor (related party) under s 136 of the Act.
4. The Licensee provided fraudulent and dishonest information to the Complainant in relation to the property transaction for 1/43 Wikiriwhi Crescent Palmerston North.
5. The Licensee failed in his duty of diligence to his franchise company and to Leonard John Doran and Joyce Evelyn Doran (Mr and Mrs Doran) and to the Complainant as a prospective purchaser of the above named property.
6. The Licensee failed to meet his legal and fiduciary obligations and was negligent and dishonest, and these matters should be reported to the Serious Fraud Office.
7. The Licensee withheld information that the Complainant, as a potential purchaser, should have been privileged to.
8. The Licensee failed in his duty of care to Mr and Mrs Doran and to the Complainant.

9. That the document attached, identified as “Item 2”¹¹ which is an email to the Complainant, and provided to the REAA, is a fraudulent document and an attempt at a disclosure statement when it is not.

[31] It is evident that Complaint C22810 is in relation to the same events as those which were the subject of Complaints C16559 and C17489. The material Mrs Doran submitted with Complaint C22810 was in large part a duplication of the material submitted in relation to those complaints, together with correspondence and Committee decisions on those complaints.

[32] The Committee decided not to inquire into the complaint (“the Committee’s C22810 decision”).¹²

[33] The Committee set out its reason for not inquiring into Complaint C22810 as follows:¹³

The Committee’s reason for not inquiring into the complaint is that the matters complained of have already been dealt with the Authority and the allegations are lacking in evidence, are frivolous and vexatious and not made in good faith.

[34] In particular, the Committee found that:¹⁴

- [a] there was no evidence of any material irregularity with the EPA; Mrs Doran had misunderstood the estate of the property, and Mr Fleming had not engaged in fraud by not recording “tenants in common” in the ASP;
- [b] the issues raised by Mrs Doran regarding disclosure under s 136 of the Act had been dealt with by the Committee in its C174989 decision and were simply repeated by her in Complaint 22810;
- [c] the Committee had closely examined Mr Fleming’s performance (as to his fiduciary duty to the vendors of the property, his duty of care to Mrs Doran as a prospective purchaser, and his legal obligations to both, in its C17489 decision and other than the findings recorded in that decision, there was no

¹¹ The reference to “Item 2” is in fact to Appendix Two.

¹² Complaint No C22810 re Stuart Fleming: Decision not to inquire, 29 November 2017.

¹³ Committee’s C22810 decision, at paragraph 3.1.

¹⁴ At paragraphs 3.2 to 3.9.

evidence in Complaint C17489 or C22810 to support Mrs Doran's contention that he was in breach of any of those obligations nor any negligence or dishonesty; and

- [d] there was no evidence in Complaint C17489 or Complaint C22810 that Mr Fleming had withheld or provided false or misleading information to Mrs Doran about the property or the circumstances of the sale.

[35] The Committee referred to the Tribunal's decisions in *Hodgson v Real Estate Agents Authority (CAC 10037)* (in which the Tribunal held that the onus of proving a complaint is on the complainant, on the balance of probabilities),¹⁵ and *Pollet v Real Estate Agents Authority (CAC 10048)* (in which the Tribunal held that Complaints Assessment Committees have a wide discretion whether to inquire into, or inquire further into a complaint or allegation under the Act).¹⁶

Appeal

[36] Mrs Doran set out the grounds of appeal in her Notice of Appeal as follows:

Refer all of my emails C22810 to CAC 413

Appendix 2 is a personal letter not a disclosure

9 dot points altered no 9. Specifically was altered to accommodate previous CAC unsatisfactory conduct also C 413 from CAC.

[37] In the Chairperson's Minute (3), dated 27 April 2018, the Tribunal recorded that on the basis of the grounds of appeal, as set out by Mrs Doran, the Tribunal will be required to determine, only:

- [a] Whether it was open to the Committee in the decision dated 29 November 2017 to refer to its finding in its decision dated 30 June 2017 that "Appendix 2" did not meet Mr Fleming's obligation as to disclosure (as set out in s 136 of the Real Estate Agents Act 2008, and to find that by failing to comply with that obligation, Mr Fleming had engaged in unsatisfactory conduct; and

¹⁵ *Hodgson v Real Estate Agents Authority (CAC 10037)* [2011] NZREADT 3, at paragraph [16].

¹⁶ *Pollet v Real Estate Agents Authority (CAC 10048)* [2013] NZREADT 4, at paragraph [32].

[b] Whether the Committee incorrectly set out the elements of Mrs Doran's complaint in paragraph 1.4 of its decision dated 29 November 2017.

Submissions

[38] Mrs Doran's submissions do not address the issues set out above. In large part they reflect or repeat the submissions in support of Complaints 16559, 17489, and 22810. They repeat the allegations made in those complaints, in particular as to negligent, fraudulent and dishonest conduct by Mr Fleming, and the validity of EPA and the real estate transaction as a whole. Those allegations were considered by the Committee in its C17489 decision, and referred to in its C22810 decision.

[39] Mrs Doran also alleges fraud and misrepresentation by the Authority, its employees, and the Committee, and alleges that the Tribunal is biased in favour of Mr Fleming.

[40] We turn to consider the issues raised in Mrs Doran's appeal against the Committee's C22810 decision. We note that both Mr Hargreaves (on behalf of Mr Fleming) and Mr Mortimer (on behalf of the Authority) submitted that the Committee did not err in either respect.

The Committee's reference to its finding in its C17489 decision that "Appendix 2" did not meet Mr Fleming's obligation as to disclosure (as set out in s 136 of the Act) and to find that in failing to comply, he had engaged in unsatisfactory conduct

[41] In her statement of her Complaint 22810 Mrs Doran said:

Please do not lose sight that Stu Fleming has recently been found guilty of unsatisfactory conduct 7/7/17¹⁷ by CAC, REAA Government Agency's of New Zealand.

That complaint is about the same property as this complaint is about. Stu Fleming has previous disciplinary from REAA and CAC decisions notwithstanding the unsatisfactory conduct plus a compliance order and now this complaint on the handling of the property of Joyce Doran and Leonard Doran who was not of legal and mental capacity even when the property was purchased.

¹⁷ The Tribunal understands this to be a reference to the Committee's C17489 decision, issued on 30 June 2017.

All these complaints are for the same property transaction. Two have been found to be warranted of mention after my determination for justice makes me persist.

This complaint is about the same property. What happens to 3 strikes and your out Stu Fleming or at least some common sense should prevail with in the REAA.

...

My new complaint is regarding Item 2 my personal email from Stu Fleming that fraudulently and knowingly he used to commit misconduct with the information that Stu Fleming provided to me personally, 19th March 2012.

[42] Mrs Doran's Complaint C22810 was not "new". It had been made in Complaint C16559 (by Mr Doran), on 26 August 2016, and in Complaint C17489 (by Mrs Doran) on 17 October 2016. The Committee considered Mrs Doran's Complaint C17489 and made a finding of unsatisfactory conduct against Mr Fleming: that is, that he had not complied with his obligation of disclosure under s 136 of the Act.

[43] That issue having been decided by the Committee in its C17489 decision, and not appealed, could not be revisited, or remade by the Committee. Further, the Committee could not act as an appellate body in respect of its own decision. Consistent with the legal principles of res judicata and the finality of proceedings, an attempt to have the Committee revisit or remake one of its own decisions is vexatious, as the Tribunal said in its decision in *Dyall v Real Estate Agents Authority (CAC 403)*:¹⁸

In particular, and in the light of the first Tribunal's decision ... we are not persuaded that the Committee was wrong to find that Dr Dyall's second complaint was vexatious. A complaint that is in essence an attempt to revisit a matter that has already been considered and determined is properly found to be vexatious.

[44] We find that the Committee was entitled to refer to its earlier C17489 decision. It would have been in error had it not done so. Mrs Doran has not established this element of her appeal and it is dismissed.

The Committee's statement of the elements of Ms Doran's complaint

[45] The Committee did not state the elements of Mrs Doran's Complaint C22810 incorrectly. The Committee's outline of the complaint (at paragraph 1.4 of its C22810

¹⁸ *Dyall v Real Estate Agents Authority (CAC 403)* [2016] NZREADT 41, at paragraph [29].

decision) correctly reflects the “key issues confirmed with complainant(s)” in the Authority’s Initial Referral Report provided to the Committee.

[46] With one exception, the wording is almost identical. The one exception is:

[a] Issue 9, Initial Referral Report: “That the document attached, identified as “Item 2” which is an email from the Licensee to the Complainant, and provided to the Real Estate Agents Authority, is a fraudulent document and an attempt at a disclosure statement when it is not”

[b] Paragraph 1.4(i), Committee’s C22810 decision: “The Licensee’s disclosure under s 136 was a fraudulent document”.

[47] The Committee’s abbreviation does not affect the intent of this element of the complaint, which focussed on the redacted version of Mr Fleming’s email of 19 March 2012. The fact that it was provided to the Committee was evident on the papers before the Committee. Mrs Doran has not established this element of her appeal and it is dismissed.

Outcome

[48] Mrs Doran’s appeal is dismissed.

[49] Pursuant to s 113 of the Act, the Tribunal draws the parties’ attention to s 116 of the Act, which sets out appeal rights. Any appeal must be filed in the High Court within 20 working days of the date on which the Tribunal’s decision is served. The procedure to be followed is set out in part 20 of the High Court Rules.

Hon P J Andrews
Chairperson

Ms N Dangen
Member

Mr N O’Connor
Member