

REAL ESTATE AGENTS LICENSING BOARD

No. 2007/610

IN THE MATTER

of the Real Estate Agents
Act 1976

AND

IN THE MATTER

of an application under
Section 48 of the Act by
**Prestige Real Estate
International Limited** for
the renewal of a
certificate of approval as
a real estate salesperson
for **MICHAEL TROMP-
DE HAAS**

HEARING: 6th July 2007

DECISION: 2nd October 2007

APPEARANCES: S. Gloyn for the applicant
T D Rea for the Real Estate Institute of NZ Inc.

DECISION OF THE REAL ESTATE AGENTS LICENSING BOARD

Hon W P Jeffries (Chairperson), P Dudding, M Giera and D Russell

INTRODUCTION

Prestige Real Estate International Limited seeks the renewal of the certificate of approval as a real estate salesperson of Michael Tromp-de Haas. The Real Estate Institute of New Zealand Incorporated ["the Institute"], have filed a wish to be heard and as a consequence, the Real Estate Agent's Licensing Board ["the Board"] has examined the circumstances of the sale, after a failed auction, of a residential property located at 13 Vonnell Place, Birkenhead, Auckland, previously owned by the late Bronwyn Dianne Hilbron. The events giving rise to this matter occurred between 10 September, 2004 and 21 October, 2004.

Mr. Rea, for the Institute explained in opening that those responsible for enforcement of the Real Estate Agent's Act 1976 ["the Act"] at the Institute, on receipt of the complaint made by the late Mrs. Hilbron on 29 November, 2004 initially decided to place the matter before a Regional Disciplinary Committee expected to be established in 2005 once ministerial appointments had been made. As these appointments were not made in 2005 or 2006, the decision makers of the Institute decided to challenge the annual renewal of the certificate of approval of Mr. Tromp-de Haas.

The Real Estate Agents Act provides for a three-tiered structure for certification and licensing [real estate agent, branch manager and salesperson]. A real estate agent is the superior position of the hierarchy: such a person is the most qualified, may operate their own business, is responsible for the administration of the trust account with concomitant administrative duties such as filing monthly returns to the Institute and by virtue of S.51A of the Act, is "liable for the acts and omissions of a salesperson engaged under a contract for services in the same manner, and to the same extent, as for acts and omissions of a salesperson engaged under a contract of service".

It follows, the lowest status is that of an approved salesperson who is the least qualified in the statutory real estate hierarchy, and whilst allowed to conduct sales and purchase transactions, operates under the supervision of a fully licensed real estate agent who is vicariously liable for the conduct of the salesperson. Members of the public authorise licensed Real Estate Agents to sell their property, although the initial transaction may be effected by an approved salesperson.

In this case, the Institute decision makers, did not chose to institute any form of disciplinary action in relation to the licensed real estate agent with whom the late Mrs. Hilbron authorised to auction her property, Realty Excellence Limited, MREINZ, a member of the New Zealand franchise group Ray White Real Estate. Rather, after the expiration of over two years, the Institute has chosen to place under the scrutiny of the licensing Board, the conduct of Mr. Tromp-de Haas, who at the material time had had seven months experience and was aged 21 years. A Mr. Rob McDougall, the husband of the sales manager of Realty Excellence Limited, a person who, according to Mr. Fred Russell, the Principal Officer of Realty Excellence Limited had "worked in real estate for a long while" accompanied Mr Tromp-de Haas at the critical meeting with the late Mrs. Hilbron on 21 October, 2004 but declined Mr Tromp-de Haas's solicitor's invitation to provide evidence before the Board.

Since the controversial transition in September/October 2004, the Institute has allowed two annual renewals of the certificate of approval of Mr. Tromp-de Haas to occur without challenge. It is not evident to the Board when Mr. Tromp-de Haas ceased his association

with Realty Excellence Limited and commenced working for the applicant in this matter, Prestige Real Estate International Limited, the principals of which have not been involved in any way with the transaction under examination before the Board.

EVIDENCE

Mr. Rea advised in opening that the complainant, Bronwyn Dianne Hilbron had died earlier this year but had sworn an affidavit on 9 March, 2007 recording her evidence about the matters in issue. Mr. Gloyn, the solicitor for Mr. Tromp-de Haas, properly accepted the admissibility of this evidence and apart from one particular factual matter, which will be resolved in favour of the late Mrs. Hilbron, the differences which have emerged between Mrs. Hilbron's version of events and that of Mr. Tromp-de Haas, are without importance.

The two other witnesses supporting the Institute's testing of the application for renewal were Donovan Patrick Seager, a Registered Valuer specialising on North Shore market values for residential properties and Graeme Carson McGlenn a Christchurch Chartered Accountant who evidenced the financial position of Mrs Hilbron at the time of the transaction, concluding "that Mrs. Hilbron was under no apparent financial difficulty at the time of selling the Vonnell Place property and was, therefore, under no apparent financial pressure to sell at that time".

For Mr. Tromp-de Haas, an unchallenged affidavit of Stuart James Matheson was adduced evidencing the existence of an American based prospective bidder for the property in question. Also, Nicola Jane Cleary, one of the two purchasers of the property, evidenced the facts of the purchase and the courteous conduct of Mrs. Hilbron, exhibited after the sale, to the deponent, her husband and her children, on a number of occasions.

A valuer, Mr. Kerr, provided a retrospective market valuation of the property. In Mr. Kerr's expert opinion was that the property was worth \$370,000 in October 2004.

NARRATIVE OF EVENTS

From the affidavits of the late Mrs. Hilbron and from the sworn evidence of Mr. Tromp-de Haas, which Mr. Rea tested in cross-examining the following facts are established:

The late Mrs. Hilbron qualified as a primary school teacher in 1970 and worked in that profession for approximately 37 years, whilst also raising, with her former husband, four children now aged between 24 and 27 years.

Mrs. Hilbron purchased 13 Vonnell Place in 2002, a large property which enabled her to supplement her income with home stays and rent from a one bedroom facility.

In early 2004, Mrs. Hilbron availed herself of a free property appraisal by a licensed Real Estate Agent who assessed the market value of 13 Vonnell Place at between \$390,000 and \$420,000. On 10 September, 2004, Mrs. Hilbron was looking in the window of the office of Ray White Birkenhead, Realty Excellence Limited, when Mr. Michael Tromp-de Haas, an approved salesperson of that business, approached Mrs. Hilbron to discuss her real estate situation.

The following day, Mr. Tromp-de Haas visited Mrs. Hilbron at her home and inspected the house and land and recommended that Mrs. Hilbron auction the property in order "to achieve the best possible market price for her home".

On 17 September, 2004, under the supervision of the Ray White Birkenhead Administrator, unnamed, Mr. Tromp-de Haas finalised the auction agreement terms between the licensed real estate agent, Ray White Birkenhead and Mrs. Hilbron.

Over the next four weeks, Mr. Tromp-de Haas managed a conventional pre-auction marketing campaign involving printed media and open home days. On 19 October, 2004 after assessing a Vendor Report under the letterhead of Ray White Real Estate indicating that one offer of \$305,000 had been rejected, Mrs. Hilbron set the reserve price at \$390,000 for the auction which equated with the lowest end of the free property appraisal provided by a real estate agent earlier in the year.

In the evening of 19 October, 2004, four auctions were held at the rooms of Ray White Birkenhead none of which resulted in a sale on the night. Mrs. Hilbron's auction was the last and failed on the basis that the final bid of \$320,000 was \$70,000 below the reserve price of \$390,000.

Representatives of Ray White Birkenhead, being Peter Oliver, Carole Dyas and Colin Elliott attended the auction as did Stuart Matheson a Ray White Financial Services mortgage broker who was acting on instructions for the ultimate purchasers of 13 Vonnell Place, Birkenhead, Mr. Timothy and Mrs. Nicola Cleary. Mr. Matheson's office is in the same building as Ray White Birkenhead. Mr. Matheson arranged the mortgage finance for the purchasers, the Clearys.

Mrs. Hilbron's two adult daughters attended the auction. According to the evidence of Mrs. Hilbron, the overseer of the auction, Mr. Peter Oliver and Mr. Tromp-de Haas immediately after the abandoned auction invited her to negotiate with the couple who had made the \$320,000 bid. The couple increased their offer to \$330,000.

Mrs. Hilbron refused the increased bid and recalls her daughters also rejecting the increased offer of \$330,000 on behalf of their mother. Mrs. Cleary, one of the ultimate purchasers, evidenced that she "could hear some debate" with the voices sounding "agitated", in an adjoining room, she assumed involved Mrs. Hilbron, her daughters and Mr. Tromp de Haas. Mrs. Hilbron evidenced that she and her daughters were in the Ray White Birkenhead premises from 6:30 pm to 10:00 pm. Glasses of wine were offered to the women after the auction process completed at about 8:00 pm.

The following day, 21 October, 2004, the Clearys consulted the mortgage broker Stuart Matheson who agreed that the Clearys could afford an increased offer of \$2,000, thereby increasing their main offer to \$332,000. This sum represented the limit for these prospective purchasers. The Clearys invited Mr. Tromp-de Haas to submit the new offer of \$332,000 to Mrs Hilbron.

Mr. Tromp-de Haas rang Mrs. Hilbron during school hours at Birkdale Primary School advising her that he had "good news" and requesting a meeting with her at the property after school. Mrs. Hilbron explained that she had an important dinner appointment that evening at 5:00 pm and would have to leave her home at 4:30 pm.

Mr. Tromp-de Haas discussed the situation with Mr. Robert McDougall, "an experienced agent". Mr. Fred Russell, the Principal Officer at Ray White Birkenhead in a letter dated 14 January, 2005 advised Mrs. Hilbron that Mr. Rob McDougall was the husband of "our sales manager, Audrey McDougall".

Without informing Mrs. Hilbron before the appointment, Mr. Tromp-de Haas was waiting for Mrs. Hilbron with Mr. McDougall when she returned home from school at 3:15 pm.

According to Mrs. Hilbron's sworn evidence, Mr. Tromp-de Haas and Mr. McDougall sat down at her table to persuade her to accept the new offer of \$332,000. According to Mrs. Hilbron, the three people discussed the offer from the time of meeting at about 3:15 pm to the time of her signing at 4:30 pm, as corroborated by the time of 4:30 pm Mr. Tromp-de Haas recorded on the Memorandum of Contract dated 21 October, 2004.

Mrs. Hilbron evidenced the transaction in her sworn affidavit:

"When I arrived home, Mr. Tromp was there waiting for me, along with another man. In my original statement, I had named the other man as Fred Russell, the manager of Ray White, Birkenhead, however, I now understand that the other man was, in fact, Mr. McDougall who was apparently the husband of Ray White Birkenhead's sales

manager. I am aware of this matter from a letter that I have seen sent by Mr. Russell to the Real Estate Institute dated 14 January 2005.

I am not entirely sure how I came to understand that the other man was Mr. Russell, however, I believe that I must have made an assumption it was him because I was aware that Mr. Russell was the manager, and I could not otherwise understand why Mr. Tromp would have involved someone else in the process as I had never met Mr. McDougall previously.

Mr. Tromp told me that the good news was that the couple who had offered \$33,000.00 had offered to pay \$2,000.00 more. I was annoyed by this as it was still well below what I wanted for the property.

I then found myself sitting at the table with Mr. Mc Dougall and Mr. Tromp where Tromp continued to make me feel uncomfortable because I did not want to accept the couple's offer.

Mr. Tromp did not suggest that I should take some time to consider the offer, or talk to a lawyer or my daughters. He and Mr. McDougall created a sense of urgency for me to get on and sign the agreement, and it was clear from their manner and body language that they were not planning on leaving until I signed it.

I wanted to get out of the situation and felt as though I had no choice with both men sitting in front of me and not showing any indication of wanting to leave, so I signed the agreement and broke down in tears in front of both of them.

As soon as I had signed the agreement, both Mr. McDougall and Mr. Tromp left my home straight away.

When I signed the agreement, I believed there was a cooling off period that applied and that I could later get out of the agreement. I thought, from my experience with credit contracts, and for example, contracts for sale and purchase of encyclopaedias etc, that there was a minimum period by which I as a consumer had the right to cancel the contract. I did not realise that this was not the case with property transactions."

Mrs. Hilbron immediately sought legal advice from a solicitor, Mr. Jim Thompson who advised Mrs. Hilbron to obtain a valuation of the property. Mr. Don Seager, a registered valuer with Don Seager Valuations Limited, provided a written valuation on 8 November, 2004. In Mr. Seager's opinion, 13 Vonnell Place possessed a current market value of \$420,000. A further valuation was obtained from a Mr. Denley at \$405,000 to \$420,000. Mrs. Hilbron's solicitor instructed Mr. John Weymouth, a Barrister, to assist in the preparation of a comprehensive

memorandum setting out the facts which was sent to the Real Estate Institute of New Zealand with a copy to Ray White Birkenhead. On 14 January, 2005, Mr. Fred Russell replied to the Institute. Mr. Russell confirmed that he spoke to Mrs. Hilbron when she rang the agency on 22 October, 2004, the day after she signed the contract of sale.

Mr. Russell firmly rejected any suggestion of "pressure" being placed by Mr. Tromp-de Haas or indeed Mr. McDougall who "is a gentleman who also is always courteous and naturally patient, considerate and understanding. He assisted Mrs. Hilbron on the day the contract was signed". Mr. Russell stated that he "stand[s] by my salespeople [sic] in this case." The Board notes the plural term "salespeople".

ISSUES

One of the principal issues of fact at the hearing was whether Mr. Seager's valuation opinion of 8 November, 2004 was credible. Mr. Gloyn cross-examined Mr. Seager and adduced evidence from a registered valuer Mr. Weston Walter Kerr, who valued the subject property at \$370,000.

The Board observes that Mrs. Hilbron's set reserve of \$390,000 was based on a "free appraisal" provided earlier in the year by an un-named local real estate. The opinion of Mr. Gary Denley, another registered valuer, placed a market value figure of at least \$405,000 whilst Mr. Seager's evidence places the market value at \$420,000.

The significant point for the Board is that out of the three identified valuations and the one unidentified valuation, a consensus is reached whereby only one of the four valuers placed the current market valuation for the subject property at below the reserve price of \$390,000.

The Board calculates that the ultimate sale price of \$332,000 is \$58,000 below two valuers' consensus of the current market value of not less than \$390,000, a figure corroborated by the third unknown appraiser. Mrs. Hilbron had a credible, rational basis for setting the reserve at \$390,000.

The next principal issue is whether Mrs. Hilbron was unduly influenced to accept a substantial below market offer when Mrs. Hilbron signed the memorandum of sale at "4:30 pm" on 21 October, 2004.

As a matter of law, Mrs. Hilbron contracted with Ray White Birkenhead by way of a written contract of agency signed by Mrs. Hilbron. An agreement is referred to in paragraphs 11 and 14 of Mr. Tromp-de Haas's affidavit although neither the Institute nor Mr. Tromp-de Haas adduced the original at the hearing. Without such a written contract of agency, the Real Estate Agents Act prohibits estate agents from suing to receive fees: S.62. By paragraph 15

of the document [exhibit "C" in the affidavit of Mrs. Hilbron], the vendor, Mrs. Hilbron appointed Realty Excellence Limited, under the heading "Ray White Real Estate" as "agent" "on behalf of the vendor Bronwyn Dianne Hilbron". By virtue of S.51A of the Act, Realty Excellence Limited, Ray White Birkenhead "is liable for the acts and omissions of a salesperson engaged under a contract for services in the same manner, and to the same extent, as for the acts and omissions of a salesperson engaged under a contract of service".

At this point, the essential problem created by the Institute selecting only Mr Tromp-de Haas' conduct in the controversial sale transaction for examination becomes clear.

In an Interim Decision dated 19th July, 2007, the Board stated:

It is difficult for the Board in its assessment of the sale transaction to sever the role of Mr Tromp from the role of other members of the license holder which held the contract with the vendor, the late Mrs. Hilbron. As the Board has the power to make a determination in respect of the other members of the license holder, Realty Excellence Limited, in relation to the sale transaction in October 2004 of 13 Vonnell Place, the Board is obliged by S. 27 of the New Zealand Bill of Rights Act to give members of Realty Excellence Limited an opportunity to be heard.

S.27(1) of the New Zealand Bill of Rights Act provides:

"Every person has the right to the observance of the principles of natural justice by any tribunal or other public authority [The Real Estate Agents Licensing Board] which has the power to make a determination in respect of that person's rights, obligations, or interests protected or recognised by law."

The Board, as a matter of fairness, wishes to provide an opportunity to the Principal Officer of Realty Excellence Limited at the time [Mr. Fred Russell] and the present Principal Officer of Realty Excellence Limited to explain their knowledge of the controversial transaction including the respective roles of the mortgage broker and Mr McDougall who attended with the late Mrs Hilbron and Mr. Tromp at the critical meeting at her then home on 21 October, 2004.

Accordingly, the Board invites the Registrar to send a copy of this Interim Decision to each of these persons, together with all the affidavits already adduced. If necessary the transcript can also be made available to each of these persons.

Both these persons have a full month within which to provide evidence and to make submissions to the Board, regarding the particular transaction under examination.

Both Mr. Rea and Mr. Gloyn, present counsel for the parties, are also to be given a copy of this Interim Decision.

Should either or both of these persons elect to give evidence, a resumed hearing of the matter can be arranged for later this year.

The Institute, through Counsel, Mr. T D Rea, replied in a memorandum dated 27 August, 2007, noting that the mortgage broker had provided an affidavit on behalf of Mr. Tromp-de Haas, that Mr. Gill was not appointed principal officer until 16 May 2005 [some seven months after the events in question] and had no involvement in the transaction and that Mr. Russell "is also not able to give any direct evidence on the transaction in issue. His response is effectively a testimonial on behalf of Mr. Tromp-de Haas, and submissions".

Mr. Russell, who resigned from Realty Excellence Limited on 20 May, 2005, responded by way of a letter dated 2 August, 2007. Mr. Russell stated that he

"was not personally present at any stage of negotiations or marketing in Mrs. Hilbron's sale."

S.51A of the Real Estate Agents Act makes the real estate agent [in this instance, Realty Excellence Limited], civilly liable for any acts or omissions of its salespersons. It is evident that the Institute does not regard this provision as creating a potential liability on the real estate agent in relation to the disciplinary powers exercisable by the Board under Part VII of the Act, for the acts and omissions of Mr. Tromp-de Haas in respect of the Hilbron sale transaction justifying the Institute testing before the Board, his present employer's application for an annual renewal of his certificate of approval.

Attached to Mr. Rea's memorandum of 27 August, 2007, is a written statement [unsigned] of Mr. McDougall, the other person from the agency who, unexpectedly for Mrs. Hilbron, accompanied Mr. Tromp-de Haas at the critical meeting at the home of Mrs. Hilbron on the afternoon of 21 October, 2004.

Mr. McDougall states:

"A meeting was arranged between the vendor, Michael Tromp-de Haas and myself Rob McDougall."

The passive language disguises the identity of the person who "arranged" the meeting. The vendor obviously did not arrange the meeting. Mr. Tromp-de Haas stated in his evidence that Mr. McDougall *"agreed to attend the meeting with Mrs. Hilbron and me."* The written statement of Mr. McDougall [supplied by the Institute's Counsel after the Interim Decision of the Board dated August 2007] is as follows:

13 VONNELL – AUCTION

A meeting was arranged between the vendor Michael Tromp and myself, Rob McDougall. This started approximately 3:30 pm, 21 October, 2004.

I introduced myself as an older person from our company to help explain what has transpired and what options are available. Also, I was not there as a salesperson to coerce her into signing. Michael said he was concerned for your well being and I might be able to help.

I asked her what her reasons were for listing and eventually selling her property. Reasons: Too much upkeep, too much land to maintain, some tradespeople have taken advantage of her, was enthusiastic at the beginning but that has waned, working three jobs to keep head above water, needed students to be boarders to help pay the mortgage, they could also be a problem.

The above points took quite awhile to discuss but that is the general conversation. I pointed out that these problems will always be there and the reason for selling will always be there.

I mentioned similar cross roads in my life where I had to make decisions. Also, the positive thinking quoted instances where my wife would want a situation to happen and come home at night and say "guess what happened today, you wouldn't believe it" [Basically her situation she wanted would happen]. The vendor quoted an instance similar.

A quote I used being "that if you do the same thing in the future as you have done in the past, you cannot expect a different result" the vendor finished the quote before I did. She could relate to everything I said.

All of this was relating to the fact that the properties she was considering were out of her price bracket. As she would be getting herself into the same situation.

It was suggested that she looks in a different price bracket, at a different type of house, looks at the properties from a clinical point of view [because she was wanting

to run a business from same - boarders]. If she purchased a smaller property there would not be as many negatives as the present one and it would be easier to repay a smaller mortgage.

The vendor asked what the real estate fees were. The vendor located two calculators, one for me and the other for herself. I calculated the fees and wrote it down. The vendor was working out the amount she would end up with. As it was only \$20,000 and the balance to be paid later but before settlement, the vendor continued to work out her figures. There was dialogue basically confirming settlement dates, deposits.

As the vendor was 57 years old, I asked her if the bank would give her another mortgage. "Yes", she replied. We continued to talk, as previously, about properties, the state of the market, interest rates. I mentioned that when she looks and finds a more suitable property [as mentioned above] because she would be cashed up, she will in a strong position to negotiate and purchase.

The vendor picked up the pen and signed.

CONCLUSION

All through our conversation, I said on numerous occasions that it was her choice. After her signing, not once did I think that she was forced by myself to sign.

According to Mr. Russell's statement of 2 August, 2007, Mr. McDougall is "a certificated salesperson and gentle man in his fifties, ex carpenter and boat builder, assisted in the final offer and I know him to be entirely trustworthy. I am sure that his statement can be relied upon as to how he helped Mrs. Hilbron to consider the offer and its acceptance."

The terms of this presentation by the experienced Mr. McDougall demonstrates advocacy directed at the single objective of securing an acceptance signature by Mrs. Hilbron on a below market offer, before her pre-determined time for ending the conversation, at 4:30 pm on 21 October, 2004. The interests of the real estate agency and its employees prevailed over the interests of the late Mrs. Hilbron. The interests of the mortgage broker operating from the same building as the real estate agent were also served by the completed contract.

The Board concludes that Mr. McDougall, with Mr. Tromp-de Haas, acted as a persuasive influence directed at Mrs. Hilbron lowering her expectations:

"All of this was relating to the fact that the properties she was considering were out of her price bracket as she would be getting herself into the same situation."

The absence of any involvement in the transaction by Principal Officer, Mr. Russell exempted him from the attention of the Institute. The Institute decided not to include Mr. McDougall in its allegation that "Mr. Tromp-de Haas exerted undue pressure on her to sign the agreement, in circumstances where it was, or should have been apparent to Mr. Tromp-de Haas that she was in an especially vulnerable position as a result of matters that she had disclosed to Mr. Tromp-de Haas concerning her personal circumstances, and that the sale price of the property was not for a true market value, which was subsequently assessed by a registered valuer to be \$88,000 in excess of the sale price."

FUNDAMENTAL ISSUE OF JUSTICE

At the minimum, two statutory position-holders Mr. McDougall, an "approved salesperson" employed by the Licensee, and Mr. Tromp-de Haas, another "approved salesperson" employed by the Licensee, collaborated to achieve a below market valuation sale by Mrs. Hilbron.

Further, the Principal Officer of the Licensee escapes the attention of the Institute because he "was not personally present at any stage of negotiations or marketing in Mrs. Hilbron's sale", a fact confirmed by Mrs. Hilbron who originally mis-took Mr. McDougall for Mr. Russell.

Mr. Tromp-de Haas is conspicuous because of his youth and short seven months' experience. Whether a principal officer is justified in allowing such an "approved salesperson" to take responsibility for conducting negotiations with a vendor, within twenty-four hours of an auction which failed to attract any bids close to the reserve price, cannot be decided by this Board because the Institute has not brought such an issue before the Board.

Mr. Tromp-de Haas stated in his evidence that he met Mrs. Hilbron at 3:15 pm and that: *"we were at her home for approximately thirty minutes in total."* The Board disagrees with this statement as to the duration of the critical meeting with Mrs. Hilbron.

As the sale contract is timed at 4:30 pm on 21 October, 2004, the Board finds that the challenged meeting did occupy one hour. It follows, that one hour of advocacy was needed before Mrs. Hilbron acceded to what she described in her affidavit sworn before her death:

"He [Mr. Tromp-de Haas] and Mr. McDougall created a sense of urgency for me to get on and sign the agreement, and it was clear from their manner and body language that they were not planning on leaving until I signed it."

The following day, Mrs. Hilbron telephoned Ray White and explained:

"that I had been pressured into the sale. I was then told it was too late."

Subsequent independent valuations illustrated the extent of the loss suffered.

Mrs. Hilbron suffered a serious injustice which was not remedied by the real estate agent.

The complaint should have been swiftly brought before the Board in 2005 or 2006.

The question of justice for the Board is whether Mr. Tromp-de Haas, the inexperienced youth should be the only person punished by the loss of his means of earning a living, which would be the result of the Board deciding not to renew his certificate of approval. The events giving rise to the transaction occurred some three years ago. Such delay is the responsibility of the Institute.

Should Mr. Tromp-de Haas have his present certificate of approval renewed? Eleven separate testimonials from current clients of his existing employer paint a picture of a salesperson who is competent and relatively careful. The Board had assessed Mr. Tromp-de Haas whilst giving evidence and being cross examined and concludes that the testimonials are correct. His involvement in the controversial sale transaction in October 2004, occurred in the context of encouragement of another senior person and theoretically, under the supervision of a principal officer.

The Board may either re-new or not re-new the certificate of approval for Mr. Tromp-de Haas. To refuse renewal of Mr. Tromp-de Haas's approval in circumstances where his collaborator has not had his certificate of approval challenged since 2004, would create a further injustice. In fact, the Institute itself, through its Counsel's submissions, does not seek refusal of renewal. The circumstances of an almost three year delay and selectivity of the Institute's challenge to Mr. Tromp-de Haas excludes a refusal to the renewal of his certificate of approval. It is a long standing principle of law that one injustice ought not be remedied by another injustice. The application for renewal of the certificate of approval as a real estate salesperson for Michael Tromp-de Haas is therefore granted.



Hon W P Jeffries
Chairperson