

**REAL ESTATE AGENTS LICENSING BOARD**

No. 2008/623

**IN THE MATTER**

of an application under  
S.99 of the Real Estate  
Agents Act 1976

**BETWEEN**

**REAL ESTATE  
INSTITUTE  
OF NEW ZEALAND  
INCORPORATED**

Applicant

**AND**

**RONALD GEORGE  
SADLER**

Respondent

**HEARING:** 5 December 2007

**DECISION:** 10 March 2008

**APPEARANCES:** Mr S N Haszard for the Real Estate Institute of NZ Inc.  
R Hern for the Respondent

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**INTERIM DECISION OF THE REAL ESTATE AGENTS LICENSING BOARD**

Hon W P Jeffries (Chairperson), P Dudding, M Giera, D Russell and J Harnett-Kindley

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**INTRODUCTION**

The Real Estate Institute of New Zealand Incorporated ["the Institute"] applies under S.99(1) of the Real Estate Agents Act 1976 ["the Act"], to cancel the certificate of approval as real estate salesperson of Ronald George Sadler. The Institute's case involves an examination of the conduct of Mr Sadler in relation to two transactions, being the sale for commission of a property located at 8 Eric Price Avenue, Takapuna, which was the subject of a conditional sale and purchase agreement signed by both the vendor and the purchaser on 29 November, 2004 with settlement on 28 January 2005. The property was sold for \$1,050,000. The subsequent sale of this property by way of a tender process commencing on 29 January, 2005 with acceptance of a tender for \$1,311,000 on 11 February, 2005 also provided part of the evidential base for the Institute's application.

The question for the Real Estate Agents Licensing Board ["the Board"] is whether Mr Sadler's conduct as a salesperson in the two transactions relating to 8 Eric Price Avenue in late 2004 and early 2005 warrants a finding that his "character" is such that it is in the public interest that his certificate of approval is cancelled.

The Institute identified five particulars relating to the conduct of Mr Sadler, these particulars being a failure to:

- Obtain a listing authority from Mr Bennett.
- Provide Mr Bennett with a formal presentation of marketing options to sell the property.
- Recommend what marketing options would be best utilised to sell the property.
- Perform any market appraisal.
- Provide Mr Bennett any approximate market evaluation of property values in the area.

The Institute called three witnesses: Mr Russell James Bennett, the original owner of 8 Eric Price Avenue, Mr Bryan Sydney Dalton, a neighbour of Mr Bennett and the complainant to the Institute precipitating the Institute's proceedings against the certificate of approval of Mr Sadler, and a Mr Simon Upton, the first purchaser of 8 Eric Price Avenue from Mr Bennett and the subsequent vendor of the property by way of the tender process. Cross examination occurred.

Mr Sadler gave evidence explaining his role in the two 8 Eric Price Avenue transactions. Mr Clinton Hardy, the current manager of Barfoot & Thompson Limited, Browns Bay branch also gave evidence. Both witnesses were cross examined. By agreement affidavit evidence of an Albany solicitor, Mr Michael Hockley, was adduced.

### **THE FACTS**

There is no contest concerning the following facts: Mr Bennett, a widower, resided at 8 Eric Price Avenue for some 42 years and during that time had raised a family and suffered the bereavement of his wife. At the time the events under examination took place, Mr Bennett was aged 84 years.

Mr Bennett gave evidence and was cross examined. Because some people's mental capabilities become impaired with age, the Board observed that Mr Bennett's mental acuity in his recall of events and explanation of his own position under cross examination to be untouched by the aging process.

For personal reasons, Mr Bennett decided, in 2004, to sell his property and to move to a retirement village at Tauranga.

Eric Price Avenue properties are part of a cul-de-sac which allows the houses access to a small lake. One of Mr Bennett's neighbouring owners, a well known sporting figure who lives outside New Zealand, indicated to Mr Bennett that he would be interested in acquiring Mr Bennett's property.

In October and November, 2004, Mr Bennett had telephone discussions with this person during which Mr Bennett indicated that he would accept \$1,000,000 for his property.

As Mr Bennett was not advancing his sale transaction fast enough with this absent neighbour, by 26 November, 2004, Mr Bennett decided to consider other opportunities for the sale of his property

Mr Sadler had been a neighbour of Mr Bennett having lived at Eric Price Avenue for some eight years. Mr Bennett was aware that Mr Sadler was in real estate with Barfoot & Thompson Limited because of promotional documentation that had been circulated indicating Mr Sadler's occupation.

On the morning of Saturday, 27 November, 2004, Mr Bennett rang Mr Sadler at the Takapuna branch of Barfoot & Thompson Limited. Within the hour of contact being made, Mr Sadler attended the home of Mr Bennett.

Both men held a discussion. It is agreed that Mr Sadler requested Mr Bennett to formally list the property with the Barfoot & Thompson agency. Mr Bennett refused saying that he was only interested in obtaining advice at this stage.

Mr Bennett did not invite Mr Sadler to complete an inspection of the property. Mr Sadler did not seek to assess all aspects of the property. Mr Sadler was neither asked for at this meeting, nor did he offer to provide any preliminary assessment as to the current market value of the property, however, Mr Sadler discussed the prices obtained for other properties sold in the area.

Mr Bennett discussed his telephone communications with the well known, common absent owner and that Mr Bennett would accept \$1,000,000 but the other person regarded such a price as being too much.

The two men discussed methods of sale. Mr Sadler identified the tender marketing process as an option. Mr Bennett's stated position at this stage is that he was not prepared to commit by signing a listing authority.

Mr Bennett revealed that he had signed an agreement to acquire a residential unit in the Tauranga retirement village where he presently lives and that he would be liable for an undefined sum of money in the event that he did not complete the purchase for the unit at Tauranga. The application form for occupation licence at Metlifecare Greenwood, Tauranga was exhibited at the hearing and set the deposit at \$5,000. The application was conditional upon the "unconditional sale of the applicant's property at 8 Eric Avenue, Takapuna, Auckland by 4:00pm on 17 December, 2004".

Mr Bennett gave Mr Sadler access to a key and therefore, a listing with Barfoot & Thompson Limited. The next stage in the factual narrative of this matter is that Mr Sadler left the property and then rang Mr Bennett with the proposal that he show a potential purchaser the property at 2:00pm that day, a Saturday. Mr Sadler also advised that another potential purchaser wished to see the property at 11:00 am the following day, a Sunday.

Without the presence of Mr Bennett, Mr Sadler brought the potential purchaser to the property at 2:00pm. On the following day, Mr Sadler brought another potential purchaser at 11:00am again using the key for entry and without the presence of Mr Bennett.

### **DIFFERENCE**

At this point, the two witnesses' record of the sequence of events diverges.

Mr Sadler stated that he obtained an offer for \$1,035,000 from Mr Simon Upton conditional upon a seven day due diligence requirement and that he took this offer to Mr Bennett on the Saturday evening. Mr Sadler states that he told Mr Bennett that Messrs Search and Campbell were to view the property on the following day, Sunday.

Mr Bennett's recollection differs. He states that he met Mr Sadler for the second time on Sunday afternoon, not on the Saturday evening. Mr Bennett states that Mr Sadler brought with him a signed conditional offer to purchase from Mr Simon Upton in the sum of \$1,035,000. Mr Sadler referred to the possibility of another conditional (settlement in April, 2005) offer in the sum of \$1,040,000. Such an offer of \$1,040,000 was later made.

The Board adopts Mr Bennett's evidence on this point for the reason that Mr Bennett's knowledge of the \$1,040,000 conditional offer could only occur after the offerer had viewed the property at 11:00am on the Sunday. It is most unlikely for Mr Sadler to know before the

offerer had viewed the property at 11:00am on the Sunday that the offerer would propose \$1,040,000 for the property. Therefore, Mr Sadler placing the second weekend meeting between the parties at the Saturday night (see paragraph 2.14 of Mr Sadler's evidence) is at variance with Mr Bennett's knowledge (see paragraph 39 of Mr Bennett's evidence).

### **RESUMED NARRATIVE**

Mr Upton was a trustee of Hanton Investment Trust which is a family trust engaged in long term residential property investment. Mr Upton has previously purchased property marketed by Barfoot & Thompson Limited, Takapuna branch involving Mr Sadler as the real estate salesperson.

Mr Upton wanted to acquire a residential property with a lakeside or harbour view.

According to Mr Bennett, Mr Sadler told him at the Sunday meeting that \$1,035,000 was "the best price" Mr Sadler could obtain for the property, that late November "was a hard time to sell" and that "the market had hardened" and "December sales were slow".

Mr Sadler, on Mr Bennett's rejection of Mr Upton's \$1,035,000 offer on the Sunday afternoon, returned to Mr Upton's home following a phone call from Mr Upton. Mr Sadler advised Mr Upton of the other \$1,040,000 conditional offer. Mr Upton then made an "unconditional" offer to purchase in the sum of \$1,050,000.

In fact, there was a condition attached to Mr Upton's offer. The terms of this condition are as follows:

"This agreement is conditional upon the vendor's solicitor, Michael Hockley of Gaze Burt or his deputy being entirely satisfied with all matters relating to the sale and purchase. This clause to be satisfied by 4:00pm, 29 November, 2004."

To maintain the chronological sequence of these events, the affidavit evidence of Clinton Hardy, the Office Manager at Barfoot & Thompson Limited, Takapuna is now recorded explaining Mr Sadler's decision to include the condition involving Mr Bennett's solicitor's approval of the sale. The Board records the relevant evidence:

*"Ron came and saw me in late November 2004. Ron advised that he had been approached by Mr Bennett, the owner of a property at Eric Price Avenue in Takapuna. He had concerns about Mr Bennett's instructions to him with respect to the proposed sale of his property. Ron told me Mr Bennett had asked him if he knew of anyone that would be interested in paying more than \$1m for his property. Further, that contrary to Ron's advice, Mr Bennett did not want to undertake a marketing campaign or*

*otherwise expose the property to the open market. Nor was Mr Bennett prepared to sign a listing authority, but he had provided Ron with a key.*

*I understood Mr Bennett was elderly. When Ron initially discussed matters with me I asked whether Mr Bennett was of sound mind and in a position to make decisions of his own. I also, and understand that Ron did the same with Mr Bennett, queried whether Mr Bennett should consult members of his family or alternately his solicitor about the way he wanted to try to sell his property. Ron told me Mr Bennett appeared to know his own mind. Further, that Ron had asked Mr Bennett whether he should consult with his family or solicitor. Ron told me Mr Bennett had told Ron that his family were well off and that there was no reason why Mr Bennett should consult them.*

*Ron advised me he had told Mr Bennett that the best means of maximising the price that he would secure on the sale of the property was to market by means of an advertising campaign and tender programme. My view is that Ron's advice to Mr Bennett was entirely correct. However, I understood from Ron that Mr Bennett was not interested in this and had very firm views on how Ron was to proceed. Mr Bennett was anxious to secure a retirement unit in Tauranga. He had some form of option and only two weeks to exercise it. Mr Bennett wanted Ron to approach Ron's existing contacts to see if they were interested in the property.*

*After discussions with Ron I advised Ron that in the circumstances, Mr Bennett's solicitor should be advised and any offer/agreement should include a clause making the agreement conditional on Mr Bennett's solicitor's complete and absolute satisfaction with the entire transaction.*

*Ron conducted himself consistently with the recommendation that I had made to him. I understand that Ron approached a number of individuals whether they would be interested in the property. Ron managed to secure two offers on the property. Further that multi-offer forms were completed by both prospective purchasers (although these have been misplaced). Multi-offer forms confirm that the prospective purchaser has been advised that there is more than one offer on the property, and that they have made their best offer.*

*Ron presented both offers to Mr Bennett. However, prior to acceptance the offers were delivered to Mr Bennett's solicitor so that Mr Bennett could obtain independent advice before any offer was accepted. I firmly recollect that no agreement was signed and finalised until Mr Bennett's solicitor had approved that offers and independently advised Mr Bennett.*

*Mr Bennett ultimately accepted Mr Upton's offer of \$1,050,000.*

*I understood that Mr Bennett was delighted with securing the agreement in order that he could proceed with the retirement home option.*

To complete the evidence explaining Mr Sadler's conduct, the Board records the full terms of Mr Sadler's transaction report placed on the sale file at his office:

**TRANSACTION REPORT**

*Russell Bennett (vendor) rang Saturday morning 27 November, 2004 requesting me to look at property view to selling. Russell's neighbouring owner Chris Dickson (America's Cup Yacht), had been offered the property and they had been in negotiation for some weeks. Russell indicated Chris had the property valued by Durrochs and he thought the figure was \$1,300,000. However, Russell was adamant that if Chris would pay \$1,000,000 unconditional no agent's fees, he would sell to him. I advised him that my job was to get the best price for him and that I would recommend taking to market on tender. Russell did not want that. He asked if I had anyone for the property. I said I might have two or three people I could quote it to but did not like doing real estate like this because with the right market exposure, I could do a lot better.*

*Russell said he had an option to buy into Welcome Bay retirement village in Tauranga. Fifteen day escape clause. I asked him how his family would feel about what he was about to do. He said they wanted for nothing and were all very well off. Daughter in Rotorua. Son in Hamilton. 2 sons in Auckland.*

*I asked what his solicitor would think – "not up to him".*

*Russell was adamant that if Chris Dickson offered \$1,000,000 unconditional, he would sell. I said I would see what I could do. Russell gave me a key. He also mentioned that he had contacted an agent from Prestige. He did not want to sign an agency listing agreement.*

*I telephoned four potential buyers. Following appointments:*

*Saturday 2:00pm: Simon Upton*

*Sunday 11:00am: Ray Search*

*Simon made an offer Saturday evening of \$1,035,000 conditional, seven days. I advised Simon of another buyer looking 11:00am on Sunday.*

*In presenting the offer to Russell, I suggested that we incorporate a clause for Solicitor's approval. He thanked me for this. This would enable any other offer to be entertained.*

*Sunday, at 4:00pm, Ray Search advised of making an offer. I wrote the offer up and advised that it is now a multi offer, he must give me his best offer. He had previously said under \$1,000,000. I rejected, "no way". Offer was \$1,040,000.*

*I advised Simon of multi offer. Did he wish me to increase offer? Rang me back, asked me to come around and he made his offer unconditional and increased to \$1,050,000. All offers were presented to Russell and I said that I would drop them off to his solicitor. Solicitor approved Simon's offer. Russell said he was very happy".*

On Monday morning, 29 November, 2004 at 8:00am, Mr Sadler attended the property of Mr Bennett with a single signed offer to purchase 8 Eric Price Avenue, Takapuna for the sum of \$1,050,000 from Mr Simon Upton with the condition already described in this decision relating to the solicitor's approval.

Mr Bennett's evidence, at this point is:

4.5 *Ronald Sadler again said this is a good price for the property. He asked me whether I wanted to talk it over with my family. I trusted Ronald Sadler and thought at the time he was doing a good job for me. I believed he was working to get the best price for me. So I told Ronald Sadler I did not feel a need to consult my family*

4.6 *I then agreed with Ronald Sadler I would sell the property to Simon Upton for that price. He then pointed out to me the handwritten additional solicitor's clause. He explained to me that the clause was in relation to the technical wording of the agreement. On my reading of the clause that is what I understood as well. If the agreement was not in order, that clause would ensure the solicitor would point it out to me. I did not take the clause to have anything to do with the way in which Ronald Sadler advised me on the sale of my property. I produce a copy of the agreement.*

4.7 *I signed and initialled the agreement and Ronald Sadler said he would show it to my lawyer, Michael Hockley of Gaze Burt Solicitors. I saw that the confirmation had to be by 4:00pm that day. That was on Ronald Sadler's suggestion. I did not think anything of it at the time.*



- 4.8 *I spoke with my lawyer, Michael Hockley that afternoon. I simply asked him whether the wording of the agreement was in order. He confirmed it was. We did not speak about anything else. I did not know my lawyer well as I never had any previous dealings with him.*

The solicitor, Mr Hockley's evidence is:

## **1.0 Introduction**

- 1.1 *I am a partner at Gaze Burt, solicitors, Albany*
- 1.2 *I was the solicitor for Russell Bennett, the vendor, in the sale of Mr Bennett's property at 8 Eric Price Avenue, pursuant to an agreement for sale and purchase entered 29 November 2004.*

## **2.0 Sale**

- 2.1 *I have no specific memory of acting in the transaction. However, this is not surprising given the number of instructions I receive involving agreements for the sale and purchase of land.*
- 2.2 *I have though retrieved my file from archives. The agreement was subject to a special condition 15 requiring that I was "completely satisfied with all matters relating to the sale and purchase. This clause to be satisfied by 4pm 29<sup>th</sup> November, 2004.*
- 2.3 *When an agreement is presented to me, which is the subject of my approval my invariable practice is to contact the client to discuss the contract to ensure that it meets their expectations. This is irrespective of whether the client is a vendor or purchaser.*
- 2.4 *I have looked at my records for 29 November 2004. However, there are a number of gaps. It is possible that I could have seen Mr Bennett any time between 10:30 and noon. Unfortunately, there is no file note of such a meeting.*
- 2.5 *However, the first item on my file is a letter dated 29 November to Mr Bennett setting out the terms of the agreement including the condition of obtaining my approval of the contract by 4pm on 29 November. I confirmed in that letter to Mr Bennett that I had satisfied that condition.*

2.6 *There is also a facsimile that I sent to Derek Dallow of Davenports (the purchaser's solicitor) 12:33pm on 29 November confirming satisfaction of the solicitor's approval condition and thus that the agreement is unconditional.*

2.7 *I think it is very unlikely I would have deemed the condition relating to solicitor's approval satisfied if I had not consulted Mr Bennett, given my usual practice and the terms of the agreement to ensure that it met his expectations. Indeed, if I had failed to consult Mr Bennett I would have been in breach of my obligations to Mr Bennett as his solicitor.*

### **SUBSEQUENT EVENT**

Mr Upton changed his mind concerning his proposed use of 8 Eric Price Avenue as a family residence prior to settlement on 29 January, 2005. Without dispute, Mr Sadler of Barfoot & Thompson immediately commenced a visible marketing campaign including placing signs outside the property the day after settlement.

In the second transaction, the sale process involved an invitation to tender, with the published closing date being 22 February, 2005.

The witness, Mr Brian Dalton, another resident of Eric Price Avenue engaged in a due diligence exercise with the view of tendering an offer to purchase the property.

Yet another resident of Eric Price Avenue acquired the property from Simon Upton, as trustee, for \$1,311,000. Mr Sadler became the marketing agent for this purchaser who on acquisition from Mr Upton's trust of 8 Eric Price Avenue became the vendor of 11 Eric Price Avenue. Mr Sadler managed the last sale by way of a tender process.

Mr Dalton complained to the Institute about the conduct of Mr Sadler based on these facts.

### **ANALYSIS**

The key legal principle governing the conduct of the business of real estate in New Zealand involves the fiduciary nature of a real estate agent's obligations owed to a vendor.

At the point of time on the Saturday morning at the first meeting between Mr Bennett and Mr Sadler, when Mr Bennett passed control over entry into the property into the hands of Mr Sadler in respect of the key, a fiduciary relationship between the vendor and the agent was created.

The essential legal ingredient of a fiduciary relationship is that the agent or trustee owes a duty of utmost good faith to the principal or beneficiary.

In the event of a conflict between the legitimate commercial interests of an agent and the best interests of the principal, the best interests of the principal must prevail.

Therefore, the first analysis for the Board is to assess the conduct of Mr Sadler against the fiduciary standard set by law on real estate agents.

The Board has identified the five particulars relied upon by the Institute.

**1. LISTING AUTHORITY**

The Board upholds the submission of Mr Sadler's Counsel. The existence or otherwise of a listing authority is irrelevant. The commissioning by transfer of the key is the critical fact and both parties, the vendor and the agent acted consistently with the fact of the commission and the earning and payment of a fee on conclusion of a sale.

**2. FORMAL PRESENTATION OF MARKETING OPTIONS**

The Board upholds the submission of Mr Sadler's Counsel. Mr Bennett was a determined vendor as demonstrated by his pre-contract conduct described in this decision. A formal presentation of marketing options is not a necessary step for an agent performing his duties of a fiduciary nature. Mr Bennett or any vendor may dispense with a formal presentation of marketing options without compromising the principal's entitlement to proper treatment in the fiduciary relationship.

**3. RECOMMEND A MARKETING OPTION**

Mr Bennett does not dispute in his evidence that Mr Sadler *"discussed methods of selling....." including by tender.*

The fact that Mr Bennett did not accept advice does not itself impugn the conduct of Mr Sadler.

#### 4. MARKET APPRAISAL

Mr Richard Hern, Counsel for Mr Sadler submitted:

*"Mr Bennett knew what the property was worth. Mr Sadler was not instructed by Mr Bennett to undertake a market appraisal".*

Mr Hern refers to two relevant pieces of evidence. Firstly, Mr Bennett in discussing the fruitless negotiations with Mr Chris Dickson (the absentee neighbour) referred to an unsighted valuation obtained by Mr Dickson valuing the property at \$1,300,000.

The second item of evidence is the letter from Mr Dickson, received by Mr Bennett the day after he sold the property and the reference in that letter to the unsighted (by Mr Bennett) valuation by a reputable firm of valuers assessing the market value for \$1,150,000.

Do these two items of evidence prove the contention that Mr Bennett "knew" the current market value of 8 Eric Price Avenue over the weekend of 27 – 28 November, 2004 and on the morning of 29 November, 2004 when Mr Bennett conditionally accepted Mr Simon Upton's offer of \$1,050,000?

If the Board accepts the proposition that Mr Bennett "knew" the current market value of 8 Eric Price Avenue at that time, no criticism can reasonably be levelled against Mr Sadler and Barfoot & Thompson Limited. The evidence which refutes this proposition of knowledge comes from Mr Sadler and Mr Clinton Hardy.

Mr Sadler records in his transaction report that at his initial meeting with Mr Bennett that *"in order to get the best price for him.....I would recommend taking to market on tender"*.

According to Mr Sadler, he was told by Mr Bennett that there was an unsighted valuation report assessing the property at \$1,300,000. As is evident from Mr Sadler's transaction report, his client Mr Bennett expressed a desire to sell to Mr Dickson for a figure of \$1,000,000, some \$300,000 under the unsighted valuation report of \$1,300,000?

What is Mr Sadler's response to the challenge of his client evincing a will to sell for \$300,000 under a valuation of \$1,300,000?

The Board finds that Mr Bennett's evidence of a telephone conversation rather than a formal meeting with the solicitor to be correct.

The two parts of the problem, Mr Bennett's age and the fact that the proposed contract was for a price below the unsighted valuation of \$1,300,000, were not communicated to the solicitor by the express terms of the condition attached by Mr Sadler, by a direct face to face meeting between the solicitor and Mr Bennett, or by Mr Sadler directly informing the solicitor of the "concern" about Mr Bennett's age and the fact that the offer was below the unsighted valuation.

#### **ALTERNATIVE RESPONSE**

On 29 November, 2004, Mr Sadler, advised by Mr Hardy transferred the risk of the problem of this particular transaction onto the solicitor with a 4:00pm deadline, in circumstances where the solicitor was not fully informed as to the facts of the problem, namely an elderly vendor was about to sell at a below market figure. The alternative response of Mr Sadler and Mr Hardy could have been and should have been, in the opinion of the Board majority, to secure an objective assessment of the market value of 8 Eric Price Avenue. Mr Sadler himself, a professionally qualified real estate valuer, could have completed a formal appraisal in these circumstances to better inform Mr Bennett of the current value of his property. At 29 November, 2004, Mr Bennett's information position as to the current value of his property came exclusively from Mr Dickson, the absentee neighbour who evidenced a wish to buy.

The ameliorative of requesting the uninformed solicitor, [the Board emphasises, without reflection on the solicitor who could have reasonably expected the real estate salesperson to provide him more material information] falls short of good practice standards on the part of a real estate person in a fiduciary relationship with a principal/vendor. This is the finding of the majority.

Therefore, the Board finds that Mr Sadler in failing to perform a market appraisal before obtaining Mr Bennett's acceptance on Monday, 29 November, 2004 of Mr Upton's conditional offer, breached his fiduciary duty owed to Mr Bennett an elderly person selling at below market.

#### **5. PROVIDE ANY APPROXIMATE MARKET VALUATION**

For reasons set out, the Board majority finds that Mr Sadler did fail to provide such an appraisal or valuation.

**RESULT**

According to the evidence of Mr Hardy, Mr Sadler enjoys an excellent reputation. The Board observed Mr Sadler in cross-examination and concluded that he is a careful and methodical man.

The Board majority finds that the Institute has proved its case under two of the five particulars, namely, failure to perform market appraisal or provide approximate market valuation of properties in the area. Because of the division within the Board, the majority is not prepared to consider suspension or cancellation having regard to the Simes High Court decision.

Therefore, the Board majority impose the full financial penalty allowed in the existing statute of \$750.00. This fine is to be paid to the Board within 28 days of the date of service of this decision.

The Institute having been successful is entitled to costs. The Parties may find common ground on this issue. If not, the Institute must file and serve submissions within 28 days of the date of service of this decision.

**MINORITY DECISION**

The minority accept the factual narration until paragraph 2, page 14.

**MINORITY VIEW**

It is the minority view that Mr Sadler did give sufficient advice to Mr Bennett on property sales made recently in the area and further encouraged Mr Bennett to market the property in a particular way so as to maximise any price outcomes.

Because of Mr Bennett's age, Mr Sadler further encouraged Mr Bennett to take separate advice from either his family members and/or his professional advisors.

When Mr Bennett refused Mr Sadler's advice as to effective marketing, Mr Sadler took his concerns to his Branch Manager and sought his counsel.

In accordance with the advice of his Branch Manager, Mr Clinton Hardy, Mr Sadler prepared and inserted a "solicitor's approval" clause set out in the decision. Such wording was intended for the sole benefit of the vendor/client, Mr Bennett and was so far reaching as to

Mr Sadler's response was to seek the counsel of his branch manager, Clinton Hardy. Mr Hardy evidences Mr Sadler's *"concerns..... about the approach Mr Bennett instructed him to take....."*

The fact that Mr Bennett was "elderly" is recorded by Mr Hardy. The two men discussed Mr Bennett's mental capacity to make decisions.

The Board finds that the real estate agent and his branch manager both appreciated that this particular client represented a problem with two parts: one, the client was "elderly" and two, the client was contemplating an obvious below market sale of his home.

Mr Hardy's response to this problem was to involve Mr Bennett's solicitor by including a clause making the agreement conditional on Mr Bennett's solicitor's "complete and absolute satisfaction with the entire transaction".

Mr Hardy further evidenced to the Board:

*"Ron conducted himself consistently with the recommendation that I had made to him".*

Mr Hardy further deposed:

*"I firmly recollect that no agreement was signed and finalised until Mr Bennett's solicitor had approved the offers [sic] and independently advised Mr Bennett".*

Mr Bennett's evidence is that following the 8:00am signing of the conditional contract, Mr Sadler took the document to Mr Bennett's solicitor. Mr Bennett made telephone calls to the solicitor during the morning. According to Mr Bennett, the solicitor confirmed that *"the wording of the agreement was in order"..... We did not speak about anything else. I did not know my lawyer well as I never had any previous dealings with him".*

The solicitor's evidence is that his time records do not evidence a meeting although he states that it is possible that *"I could have seen Mr Bennett any time between 10:30am and noon".* Under cross examination, Mr Bennett agreed that his solicitor made reference to Mr Bennett being "happy" with the price and Mr Bennett said he was.

The solicitor refers to his work load at that time in paragraph 2.1 of his affidavit.

give the client absolute right of veto should he so wish. The particular wording of this clause is unusual in its reach. In the minority view, this clause can only be seen as a salesperson trying to protect his client's interest in the most effective way.

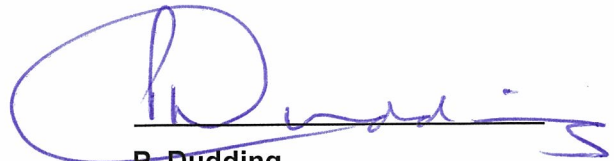
It is clear from Mr Hockley's evidence adduced that he was confident that price would have been a factor of discussion with his client. This fact is corroborated by Mr Bennett, as recorded in the decision.

For the reasons set out, the minority view is that, Mr Sadler took reasonable steps to protect and promote Mr Bennett's best interests and accordingly cannot concur with the view of the majority.



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**Hon W P Jeffries**  
Chairperson  
For the majority – Messrs Giera  
and Russell



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**P. Dudding**  
For the minority – J Harnett-Kindley