

REAL ESTATE AGENTS LICENSING BOARD

No. 2009/656

IN THE MATTER

of applications under s94
and s99 of the Real
Estate Agents Act 1976

APPLICANT

**REAL ESTATE
INSTITUTE OF NEW
ZEALAND INC.**

RESPONDENTS

**YU JIN WU &
WEN JING CHEN**

HEARING: 7th April 2009

DECISION: 30th June 2009

APPEARANCES: S Haszard for the Real Estate Institute of NZ Inc.
W Akel for the defendants

DECISION OF THE REAL ESTATE AGENTS LICENSING BOARD

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

INTRODUCTION

On 27 November 2008, the Real Estate Institute of New Zealand Incorporated [‘the Institute’] made application to the Real Estate Agents Licensing Board [‘the Board’] under SS.94,98 and 99 of the Real Estate Agents Act 1976 [‘the Act’] seeking cancellation of the licence of Access Real Estate Limited and seeking the cancellation of the individual licenses of Yu Jin Wu (also known as Jimmy Wu) and Wen Jing Chen (also known as Iris Chen) and the cancellation of the certificates of approval as real estate salespersons of Yu Jin Wu [‘Jimmy Wu’] and Wen Jing Chen [‘Iris Chen’].

Following a series of procedural events in hearings, which will be later set out, on 10 March 2009 the Institute, withdrew the application seeking cancellation of the company licence held in the name of Access Real Estate Limited. On the same date, the respondents accepted liability in terms of the applications filed on behalf of the Institute and, accepted the contents of all of the affidavit evidence which had been filed in support of those applications. As a consequence, a penalty hearing was held on the 7th April 2009 at which time both Counsel for the Institute and Counsel for the respondents made submissions as to penalty. A set of references was filed on behalf of the respondents which demonstrated the general good

standing of the respondents in the commercial community. The broad issue before the Board is what penalty ought to be imposed having regard to the respondents' acceptance of liability in terms of the applications filed.

On 28 May 2008 the original complainant Sang Jo Lee, through his solicitors wrote to the Institute. Mr Sang Jo Lee acquired 34A Taharoto Road on 10 April 2007 ostensibly from Hui Yang Wang ["Grace Wang"]. The complaint was addressed to "Ray White Pinehill – Jimmy Wu & Ray White Milford – Richard Kang".

The complaint consisted of two parts: firstly the complainant alleged that he was not informed of the material fact that the nominal vendor of the property (Grace Wang) was not the true vendor and secondly that Mr Kang as the responsible agent had made representations on the subdividable potential of the property which were incorrect.

The Institute commissioned Charlotte Gerrard of Prestige Protection Limited to conduct an investigation into the complaint. In the course of the investigations, the Institute's enquiries widened to include the circumstances of the purchase and on-sale within a week of 34A Taharoto Road. As these enquiries developed in August 2008 Ms Gerrard located two witnesses who became vital to the disposition of this matter. These witnesses were Lei (Bill) Zhu and Huiyang Wang (Grace Wang). Miss Gerrard subsequently conducted on record interviews with Jimmy Wu on 14 August 2008 and with his wife Iris Chen on the 21 August 2008.

On 4 November 2008 the complainant Sang Jo Lee wrote to the Institute explaining that he wished to withdraw all his complaints made against Access Real Estate Limited and against the respondents Jimmy Wu and Iris Chen. Mr Lee stated:

"I do not seek this matter to be pursued any further and I fully accept the explanations independently provided to me"

However, by this time the Institute had secured sufficient evidence to justify filing, on 21 November 2008, applications setting in motion these disciplinary proceedings. On 27 November 2008 the Chair together with two other members of the Board determined an ex parte application under S.98 of the Real Estate Agents Act 1976 seeking interim suspension orders. At this hearing Bill Zhu and his wife Grace Wang, a director of the vendor company Riviera Properties Limited, Jane Whetton and the investigator Ms Charlotte Gerrard provided affidavit evidence. In the subsequent decision delivered on 14 January 2009 the Board granted the Institute's applications which outlined the basic facts in this matter. The Board revoked this order on 22 January 2009, pending the substantive hearing in March 2009.

THE TWO COUPLES

Turning now to the background facts:

Bill Zhu and his wife Grace are a young married couple who in 2007 were students living as tenants of Jimmy Wu and Iris Chen at a property owned by Jimmy Wu and Iris Chen at 34 Taharoto Road adjacent to the property, the subject of these proceedings located at 34A Taharoto Road.

Both Jimmy Wu and his wife Iris Chen originate from Fujian province in South Eastern China. Iris Chen knows Bill Zhu's mother in China.

Grace Wang who comes from Liaoning some three thousand kilometres to the North of Fujian came to New Zealand, to study nursing in 2002 where she met her husband Bill Zhu.

A difficult feature of this matter is the fact that Jimmy Wu and Iris Chen took a particular interest in the welfare of this young couple, assisting them in various ways. Bill Zhu became a certificated salesperson employed on a part time basis at Access Real Estate Limited. The events which will be described involve the older couple engaging the younger couple, and in particular Grace Wang in the purchase and on-sale of 34A Taharoto Road.

By early 2007 whilst Bill Zhu and his wife were tenants at 34 Taharoto Road, Jimmy Wu and Iris Chen visited Grace who was alone at home at the time. The older couple asked Grace to sign a document as a favour to them. Grace agreed. The document was an agreement for the sale and purchase of 34A Taharoto Road from Riviera Properties Limited to Grace Wang herself. The purchase price for this property was \$645,000. At this time Grace was a student nurse aged 25 years and without any financial capacity of her own to acquire real estate.

A few days later the older couple returned to Grace, at her residence and drove her to their lawyer Mr Hong Hu. At these offices Grace was invited to sign a sale agreement dated 10 April 2007 which identified her as the owner of 34A Taharoto Road but agreeing to sell the same for the sum of \$775,000 to Mr Sang Jo Lee the original complainant in this matter. The agreement for sale and purchase evidences the sale through Access Real Estate Ltd. MREINZ. Grace was asked by an unknown person to provide her passport to an assistant at the lawyers' office without any explanation. She did so.

PROCEDURAL MATTERS

After the substantive disciplinary matter was set down to be heard in March 2009, the Respondents applied for orders excluding as inadmissible the proposed evidence of the

professional investigator. The basis of this preliminary application was that the investigator had failed to administer warnings relating to the privilege against self-incrimination, that the proposed evidence ought to be excluded pursuant to S.30(2)(3)(a) of the Evidence Act 2006 assessment regime, and that the investigator had failed to observe S.23(4) of the New Zealand Bill of Rights Act obligations owed to the Respondents.

By way of a Minute dated 6 March 2009 the Board refused to make the order for reasons contained in that Minute. The terms of the Minute are as follows:

The Real Estate Agents Licensing Board [the "Board"] set down to be heard a substantive application on 5 March 2009 being disciplinary proceedings by the Real Estate Institute of New Zealand Incorporated [the "Institute"] alleging misconduct on the part of the respondents Access Real Estate Limited, Yu Jin Wu [Jimmy Wu] and Wen Jing Chen [Iris Chen]. The Institute seeks under S.94 of the Act, the cancellation of the real estate agents licence in the name of Access Real Estate Limited and the individual licences of Yu Jin Wu and Wen Jing Chen.

Furthermore the Institute seeks pursuant to S.99 of the Act, the cancellation of the certificates of approval held in the name of Yu Jin Wu and Wen Jing Chen.

Therefore, the substantive disciplinary proceedings are of considerable importance to the Respondents. S.27(1) of the New Zealand Bill of Rights Act legally obliges the Board to act fairly when making a determination affecting the rights, interests and obligations of persons appearing before the Board and this provision is always influential when the Board performs its adjudicative function.

After the substantive disciplinary matter was set down to be heard, the Respondents made an application on 23 February 2009 under S.14 of the Real Estate Agents Act 1976 followed by an amended application on the 2 March 2009 expressed in the following terms:

"For an order [that] certain parts of the evidence of the Applicant [the Institute] being transcripts of an interview with Jimmy Wu dated August 14, 2008 and Iris Chen dated August 21, 2008 and all or any briefs or evidence or of evidence, evidence in chief or cross or re-examination or affidavits by Charlotte Lucy Gerrard based on those transcripts and interview be excluded as they are unlawful and invalid"

On Monday, 2nd 2009, the Chairman convened a telephone conference with both Counsel regarding the sequencing of the hearing of the two applications before the Board. The Chairman directed that the Respondent's application would be heard first at 9.00a.m on 5 March, 2009 on the basis that the Board would hear and determine the preliminary

question of the admissibility or otherwise of the specified "evidence" proposed to be adduced by the Institute to support its substantive disciplinary proceedings.

Accordingly, on the morning of 5th March 2009, Counsel for the applicant in his opening submissions identified three legal grounds justifying the Board ruling that the specified proposed "evidence" is inadmissible and therefore cannot be relied upon by the Institute in its substantive disciplinary proceedings.

The three grounds relied upon by Mr John Waymouth, Counsel for the applicant, are that Mr Wu possessed at the material time of the interview with the professional investigator employed by the Institute, the legal privilege against self-incrimination. Counsel characterised the disciplinary proceedings as being "criminal" proceedings because of the penalties the Board has the capacity to impose. Therefore, Counsel argued the privilege applied and has not been properly recognised by the investigator, thereby invalidating the interview as possible "evidence"

The second ground is based on S.4 and S.30 of the Evidence Act 2006. Whilst Counsel acknowledged the terms of S.14 of the Act which empowers this Board to admit evidence which might not be admitted in an ordinary court, Counsel made out a case in opening that, on the basis that the matter qualified as "criminal proceedings", it follows that "improperly obtained evidence" is subject to S.30(2)(3)(a) process of the Evidence Act, 2006 and can be excluded on the grounds set out in that statute.

The third ground is based on S.23(4) of the New Zealand Bill of Rights Act 1990 which "states that anyone arrested or detained under any enactment for any offence or suspected offence shall have the right to refrain from making any general statement [and to be informed of that right]"

In paragraph 30 of the Counsel's opening submissions he made the following submissions

"There are various manifestations of privilege contained in the Bill of Rights Act 1990 that relate to the privilege against self incrimination. Of importance is s.23(4) which states that anyone arrested or detained under any enactment for any offence or suspected offence shall have the right to refrain from making any general statement [and to be informed of that right]. This section is more a statement of the general right of silence than the privilege against self incrimination. It is clear from the affidavits that Jimmy Wu and Iris Chen felt detained by what was taking place and felt a compulsion to talk, and were not advised of any rights - which it is quite clear existed. And I suggest Charlotte Gerrard knew about"

Counsel for the Applicant referred to two affirmed affidavits of Mr Wu and his wife, whose name is Mrs Wen Jing Chen [Iris Chen]. Counsel referred to the evidence of Mr Wu's sense of being "quite scared and frightened", "pressured", "trouble [in] understanding

some of the questions”..... during the interview which did not commence with the formal legal warnings identified in Mr Waymouth’s opening submissions.

Both Mr Wu and his wife gave evidence based on their affirmed affidavits.

Counsel for the Institute, Mr Steven Haszard cross examined both witnesses challenging the testimony of each witness on their evidence of “unfair process”, although Mr Haszard did not use that legal term but used colloquial language to the same point.

Counsel for the Institute then opened the case of the respondent to this application. The first witness for the Institute is Charlotte Gerrard, the professional private investigator who conducted the original interview with Mr Wu. Ms Gerrard had sworn an affidavit on 4 March 2009.

When this witness reached the point in her testimony whereby she wished to place before the Board the audio and transcript “evidence” of her interview with Mr Wu on 14 August 2008 Counsel for the Respondents objected.

The argument of Counsel was that if the Board received the challenged “evidence” within the context of this preliminary application, the very purpose of the application would be defeated because “improper” “evidence” would be assessed by the Board which might prejudice unfairly his clients.

Counsel for the Institute in reply submitted that the regular practice of courts considering similar applications is to assess the challenged “evidence” and if the court decides that the challenged “evidence” is inadmissible, the court excludes such information from its subsequent deliberations.

The question of fact identified in opening submissions of the applicant and the evidential basis of the preliminary application is whether Mr Wu was the subject of an “unfair process “ when he spoke to the Institute’s investigator on 14 August 2008.

The Board has not yet heard all the evidence of the Institute or received final submissions on the substantive questions of law or fact. Counsel for the applicant has provided copies of relevant legal texts, statutory provisions and case law. Counsel for the applicant has raised questions requiring proper deliberation by this Board. Obviously, the Board cannot form any final judgment in the matter of this preliminary application until the whole case is heard. The Board records its [necessary] open mind on these questions at this point.

But, the question of fact raised by the applicant regarding the circumstances of the controversial interview requires the Board to hear all the relevant evidence in order to properly determine the question of fact as to whether Mr Wu was the subject of unfair process which might lead to the exclusion of the specified “evidence”.

For the Board to decide this question in favour of the applicant without providing the Institute the opportunity to refute the allegations of fact made against its witness would be an error of law. Each party must be given an equal opportunity to adduce evidence regarded as relevant to the evidential issue and each party must be given an equal opportunity to test such evidence in cross examination.

When a judicial body decides an application challenging the admissibility of "evidence" and in the event that the challenged proposed "evidence" is disallowed, that is, it is not "evidence," the judicial body consciously excludes the inadmissible material from its subsequent deliberations as a matter of judicial integrity. It is common for judges in criminal jury trials to remind juries that they must confine their consideration to the relevant admitted tested evidence at the trial and to put to one side as being irrelevant any pre-trial information received about the issue before them. This situation is not different in principle.

For these reasons, the Board will receive the audio and transcript "evidence" of Ms Gerard in order to resolve the question of fact of whether Mr Wu was the subject of unfair process on 14 August 2008 which in turn, may be relevant to the question of admissibility.

The Board has recorded its reasons for this ruling to assist both Counsel and awaits confirmation for the hearing to continue.

Following release of the Minute, the Respondents made an application for an adjournment in order to seek judicial review in the High Court of the statutory decision making of this Board. By way of a Minute dated 9 March 2009 the Board declined the application for reasons set out in that Minute. The terms of this Minute are as follows:

The Real Estate Agents Licensing Board ["the Board"] refers to its previous Minute of 6 March 2009 whereby it ordered that it would consider the proposed "evidence" to be tendered by Charlotte Gerrard, a private professional investigator contracted to the Real Estate Institute of New Zealand Incorporated ["the Institute"] to interview witnesses following a complaint made by Mr Sang Jo Lee, the purchaser of 34A Taharoto Road, Takapuna from a vendor represented by a Mr Kang of Ray White Pinehill, a licensed real estate agent.

The Board sets out in the previous Minute the factual context involving substantive disciplinary proceedings seeking cancellation orders against the respondents, brought by the Institute and set down to be heard following the immediate determination of this preliminary application.

After the release of the Minute, Counsel for the applicant [in this preliminary application] sought an immediate adjournment to allow the respondent an opportunity to judicially review in the High Court the decision of the Board to consider the proposed "evidence" of Charlotte Gerrard in order to assess whether the witness had breached a legal obligation

in recording statements made by the respondents Mr Jimmy Wu and his wife Iris Chen in their August 2008 interview.

The Board refused the application on the ground that if the Board upholding the "evidence" as being properly admissible and if after hearing the evidence tested within the context of the substantive proceedings and if the ultimate case being determined against the respondents, both appellant and review rights could be exercised in an orderly and coherent manner by the respondents. All potential issues could be dealt with on a single basis, assuming such contingencies.

The Board then heard the witness, the audio record of part of the interview and observed the cross examination of the witness by Mr Waymouth. The Board had previously heard the evidence and testing of the evidence of Mr Wu and Iris Chen by Mr Haszard.

In submissions, Mr Waymouth affirmed the three grounds of objection identified in the Board's previous Minute and made reference to S.27(1) of the New Zealand Bill of Rights Act 1990. Mr Waymouth invited the Board to focus on Mr. Wu's evidence of the events which occurred between the investigator and Mr Wu before the recorded interview began some fifteen minutes after the first encounter of these persons. Mr Waymouth submitted that evidence of "oppressive" conduct on the part of the investigator coupled with the absence of the formal warnings resulted in the "evidence" being illegally obtained and therefore not admissible.

Mr Haszard for the Institute submitted that on a factual analysis of the evidence oppression did not occur. Both Mr Wu and Iris Chen, who were interviewed by Ms Gerrard six days apart, participated without either requesting separate advice. Mr Haszard observed that if Mr Wu did feel a sense of oppression on 14 August 2008, he would have taken steps to ensure that his wife was given professional legal advice in her subsequent interview on 21 August 2008. He did not do so. Mr. Haszard submitted that the question of oppression is resolved by reference to an objective test.

As a matter of law, Mr Haszard submitted that Ms Gerrard was not legally obliged to administer a criminal investigation formal warning because there was no criminal investigation.

The Board rules that Ms Gerrard's evidence is admissible for the following reasons.

Firstly, participants in the statutory licensing regime may expect investigation of complaints by the Institute whose function is to enforce the statute. The courts in the unreported [at present] Supreme Court case Cropp v Judicial Committee and the Court of Appeal case Taylor v New Zealand Poultry Board [1984] 1 NZLR 394 distinguished statutory scheme investigations from non statutory scheme investigations whereby a member of the public might be the subject of an investigation. In this case, Mr. Wu and Iris Chen are participants in the real estate statutory licensing system and therefore subject at all times to investigation by the Institute.

Secondly, this matter involves disciplinary proceedings under the Real Estate Agents Act 1976 ["the Act"] which are not of a criminal character. The end result, if adverse for a respondent, is cancellation of a statutory authorisation and the imposition of a monetary penalty. The Board does not have jurisdiction to convict.

Thirdly, Charlotte Gerrard presented as a competent investigator aware of the distinction between criminal and non-criminal investigation. Ms Gerrard did not act unfairly in terms of S.27(1) of the New Zealand Bill of Rights Act. The Board does not fault the performance by Ms. Gerrard of her investigative responsibilities for the Institute.

Further, both Mr Wu and Iris Chen are qualified to perform their respective statutory positions within this licensing regime. Conducting real estate transactions calls for a level of comprehension and expertise in commercial transactions. Consistent with the demands of these positions Mr Wu and Iris Chen demonstrated to the Board astuteness of the overall facts of this situation. Both these latter-named witnesses had notice of a complaint lodged originally against the real estate licensee they had shared the listing of the property with on a conjunctive bases. As with all professional occupations, participants in the real estate regime may expect that their commercial conduct and practices may be investigated at any time by the professional body and its agents, in this case, the Institute. Without unambiguous compelling evidence of oppression, such on the record investigations ought not be invalidated upon an analogy with criminal proceedings.

As previously directed by the Chair at the pre-hearing telephone conference with Counsel, the substantive proceedings will commence immediately, after the disposal of these preliminary proceedings, that is now at 9.30 am. Tuesday, 10 March 2009.

As previously stated on 10 March 2009 the Respondents accepted the admissibility and veracity of the Institute's investigators' evidence.

THE LAW

The Institute's case against the respondents is based on two separate statutory provisions each relevant to the two separate legal statuses of the respondents. Firstly, the Institute relies upon S.94 in relation to the licence held by each respondent. Secondly, the Institute relies upon S.99 in relation to the status of approved salesperson for each respondent.

Regarding the S.94 applications, the Institute has invoked both S.94(1)(b) *"guilty of misconduct in the course of his [or her] or the company's business as a real estate agent....."* and S.94(1)(c) *"... has been shown to the satisfaction of the Board to be of such a character that it is in the interest of the public that the licence be cancelled"* without delineating the two different provisions.

As for S.94(1)(b) the Board must be satisfied that the offending conduct has occurred in the course of the company's business as a real estate agent. If a respondent can establish that the conduct under examination did not occur "in the course of the company's business as a real estate agent" what ever the ethical or professional criticism that might be made out against that conduct the Institute cannot succeed under that provision.

Turning to S.94(1)(c), the language of the statutory provision is materially different in that the Institute has to demonstrate conduct...*"of such a character that it is in the interests of the public that the licence be cancelled."* in order to succeed in disciplinary proceedings.

Because S.94(1)(c) defines a wider and potentially vague legal test of "character," the ruling High Court judgments have repeatedly emphasised the high standard of evidence of disqualifying character needed to sustain cancellation resting on this particular ground.

S.99 governs cancellation of a certificate of approval or suspension. The test in S.99(1)(b) is that the person has been shown to the satisfaction of the Board to be of such a character that it is in the public interest that cancellation or suspension occur.

There are two transactions under examination: the "Whetton sale" and the "Lee purchase." The first transaction did not occur, as a matter of fact, in the course of the respondents' business as a real estate agent. The vendor company is a property investor with experienced directors who elected not to commission the respondents as their real estate agents. Mrs Whetton was clear in her evidence on this point. It logically follows that the Board cannot examine this transaction in terms of S.94(1)(b) of the Act, without the elementary evidence of a formal authorisation of the licensees to act for a selling principal as a licensed real estate agent.

Turning to the "Lee purchase," the evidence is more ambiguous in respect of this transaction. Whilst Access Real Estate Limited was a co-signature in the sale, the actual sale was conducted by The Knights Limited, a member of Ray White Real Estate, at its Milford branch. Mr Kang, the approved salesperson in the transaction was not an employee of the respondents in their capacity as licensees. However, the agreement for sale and purchase involving Mr Lee was endorsed with the words of a sale through Access Real Estate Limited which resulted in a part payment of commission on the sale to the respondents' licensed company Access Real Estate Limited.

Before the Board (unusually) sets out in full the actual evidence of both respondents in their key interviews with the Institute's investigator Charlotte Gerrard, the Board excludes the "Whetton sale" from its consideration under S.94(1)(b) but expressly includes the Lee

purchase in its consideration under S.94(1)(b) in examining whether or not the respondents as licensees were guilty of misconduct in the course of their business as real estate agents.

As for S.94(1)(c) and although expressed in slightly different statutory language S.99(1)(b), the Board examines conduct in respect of each of these statutory provisions, to determine whether or not the conduct of both respondents meets the high standard of adversity of character affecting the public interest as set by the Sime case.

EVIDENCE

Having regard to the "character" feature of the Sime Case test, which both Counsel referred to in their submissions, the Board sets out the respective testimony of the unchallenged witnesses, Bill Zhu and Grace Wang in order to compare this evidence with that of the now accepted evidence of the Institute's professional investigator Charlotte Gerrard.

Dealing with the affidavit of Grace Wang:

- "12. In July 2006, Bill and I were renting a house at Sunnynook on the North Shore. One day during July, Iris Chen and Jimmy Wu called and said they have a new property and wanted to rent it out. They asked us to move there to live there.
- 13 The property was at 34 Taharoto Road Takapuna. Bill normally decides where we live and we went there because it was cheaper rent. We were paying about \$150 or \$160 rent per week and when we went to 34 Taharoto Road it was only \$130 per week. The house was old and small and was not in very good condition but I was studying at the time and going to AUT in Akoranga Drive so it was good to be living near to AUT.
- 14. We did not have a Tenancy Agreement or anything in writing, we just paid our rent in cash.
- 15. I do not know who actually owns 34 Taharoto Road and think it is owned by Iris Chen and Jimmy Wu as husband and wife. At the time I did not know anything much about the property and Bill and I just lived there as tenants, along with lots of other tenants who were there. Some of them stayed for a short time, just a few weeks, and some of them stayed a longer time.
- 16. Bill and I stayed and rented 34 Taharoto Road for over one year, from July 2006 until about October 2007 when we moved to another place on the North Shore. Then we bought our own house earlier this year in Glenfield in March 2008.

34A Taharoto Road

- 17 There was a house right next door that was number 34A. It had some tenants in there who were also Chinese but I did not know them. I did not know the owner of number 34A. Bill and I did not speak to the tenants and we did not know anything about them.
- 18. I will explain what happened when Iris Chen and Jimmy Wu asked me to do them a favour about buying the house next door at number 34A Taharoto Road. I cannot remember the exact date, but I know that it was April 2007 and was at the start of April, before Easter time. I know that it was a weekday and not the weekend.

Signing of Documents with Iris Chen and Jimmy Wu

19. One day in April 2007 Jimmy Wu came to 34 Taharoto Road. He was with Iris Chen. I was home at that moment and he said, "We need to go and sign some documents". Bill was not home at the time, I think he was at university. But he had told me that Jimmy Wu and Iris Chen were going to ask me to do a favour and that it was ok for me to do it.
20. I remember what Jimmy Wu said because I thought it was a small thing and that it would not be successful.

Agreement for Sale & Purchase (5 April 2007) (Sale by Riviera Properties to Wang)

21. Iris Chen and Jimmy Wu asked me to sign a document. I actually signed the first time outside the house a blank document.
22. I think the document I signed was an "Agreement for Sale and Purchase". I think the document I signed was like the one that is now dated "5 April 2007"
23. I just signed my signature on the back page. I think the document was all blank. They (Iris Chen and Jimmy Wu) did not put anything on the document so I signed my signature first.
24. I also put my initials on the front page, down the side, but when I did that, there was not a lot of writing all over the front page like there is now. It did not have all the information written down on it, like it did not have the date written in at the top of the page.
25. I do not remember if the "Vendor" part was filled in or not. I do not know what "Riviera Properties Limited" is or who it is.
26. I can see my name is written by "Purchaser". I do not write my own name like that because my name is "Huiyang" and I do not write it in two parts "Hui Yang" like it is written on the document.
27. I am not sure that the front page is the same as when I put my signature on the back page. The reason I think this is because when I signed, I remember seeing a purchase price of something like "\$610,000" or "\$620,000" but the document that is dated 5 April 2007 has a much higher price of "\$645,000" written on it.
28. I can see that the front page also has a possession date of "3rd May 2007". I do not remember seeing those words when I signed. Also, I can see that the front page has the words "Private Deal" written down the bottom. I do not remember seeing those words when I signed.

Travel to office of lawyer, Hong Hu

29. A few days after I had signed the document, Iris Chen and Jimmy Wu said that we needed to go to their lawyer, Hong Hu. I went with Jimmy Wu and Iris Chen in their car and we drove from Taharoto Road to Pinehill. We did not go into their Ray White office at Pinehill but we went to another office close by, which was the office for Hong Hu.
30. When we went into Hong Hu's office I did not meet him. I have never met Hong Hu. On that day, I met a lady, an assistant, and she had a document which I was asked to sign. I cannot remember what the document was but I think it was a sale offer document. It looked like the first document I had signed in the car.
31. I have looked at the "Agreement for Sale and Purchase" that has the date 10 April 2007 on it, with my name as "Vendor".

32. I think that I did sign the last page and I think it is my signature there, on the agreement for sale and purchase.
33. I cannot remember exactly what was on the front page but I think it was blank. Like the other document, I do not write my name in two parts "Hui Yang" so I think that was written in by someone else.
34. While we were at Hong Hu's office, I was asked for my passport so that the assistant could take copies of my signature and my photograph. I had my passport with me because when we were back at the house when Iris Chen and Jimmy Wu first arrived, they told me to bring my passport.
35. I do not know why they needed my passport. I did not ask any questions why.
36. I believe I did not sign the document, which is called a "Listing Authority". I have looked at a copy of that document and I can see my name is on the bottom of the second page.
37. I am quite sure this is not my signature. I believe I have never seen this document before. The Listing Authority is dated 6 April 2007, which is the day after the Agreement for Sale and Purchase dated 5 April 2007. The Listing Authority shows my name as "owner" of 34A Taharoto Road but that is not true because I was not the owner. If I had been the owner I would not buy the house one day and then sell it the next day. I would not have given anybody authority to sell it.
38. I can see that there is the word "NIL" that is written down for the amount of money to be spent on the marketing for selling the property. Again, I did not have a conversation about this.
39. I do not know why my name is on the Listing Authority. I believe it is not my writing and I think that my signature has been copied on this document and I know that I have never seen this document before and they never explained this document before.
40. I did not sell 34A Taharoto Road or ask anyone to sell it. That is because I did not buy the house.
41. I did not pay any money to anyone to buy the house at 34A Taharoto Road. I did not have very much money and I could not pay a lot of money like \$645,000
42. If Bill and I both put out money together we could not buy a house that cost that much.
43. I did not ask my parents in China to help me buy the house at 34A Taharoto Road and I did not ask them to pay the deposit money. I have talked to them about this and they did not pay any money to Iris Chen or Jimmy Wu. My parents have told me that nobody asked them to pay any money for 34A Taharoto Road.
44. The only money that my parents have paid is money to help when we (Bill and I) bought out house this year in March 2008 at 17 Sapphire Place in Glenfield. Bill's parents and my parents did help us with the deposit to buy that house, which was \$38,000.00
45. When I was asked by Jimmy Wu and Iris Chen to sign the documents I did not want to buy 34A Taharoto Road. I did not have the intention to buy the house and I did not have the money to buy the house. I never said to anyone that I wanted to buy the house.
46. When I was asked by Jimmy Wu and Iris Chen to "do a favour" I did not get any money from them or anyone else. I did not get any discount for rent or anything like that. The only thing that happened straight after I had signed the documents at Hong Hu's office was that they took me to eat lunch at a restaurant nearby. At

first I refused and said no and that I wanted to go home and maybe go to the library in the afternoon. But they said "no, no you must come with us".

47. We went to a restaurant and it was just the three of us – me, Jimmy Wu and Iris Chen. I did not enjoy the lunch and wanted to go home straight after because I was not feeling good about what had happened. I know that they had said it was a small thing and that it would not be successful, but I felt that it was wrong and I did not feel good about what I had done.
48. I know that Jimmy Wu and Iris Chen told me that "It doesn't mean anything" when I signed the documents. After I had signed, they said something like "you'll be fine. If you are going to have some problem I can guarantee you won't have any problem". But I did not believe them and I still worried about it. When I saw Bill when he got home he told me that it was alright and "don't be worried".
49. The reason I did sign the documents was that Bill had asked me to do the favour. Because Bill's mother knows Iris Chen in China, and also Bill's mother knows Iris Chen's sister in China, they know each other very well. So Bill was thinking that it is a small help, and said to me something like "you can do it for them".
50. I did not get anything from Jimmy Wu or Iris Chen and I did not see them or speak to them again about this.
51. Sometime after April when I signed the documents, Bill told me that he had been given some money by Iris Chen and Jimmy Wu. I cannot remember when he got the money, I think it was maybe in May 2007.
52. Bill told me that he was given \$2,000 from Iris Chen and Jimmy Wu. They gave him a cheque which he put into his bank account. It was Iris Chen who gave Bill the cheque and he put in into the Northcote branch of his bank.
53. Bill was told by Iris Chen and Jimmy Wu that this was money for his mother in China to help her, because she had a debt in China. They asked Bill not to tell me, but Bill did tell me. They had told Bill to just give the money to his parents, to not explain to me, and to not waste the money or buy luxuries, just to give it to his parents.
54. When Bill told me this I was very angry and I said you cannot receive this money, even though Iris Chen and Jimmy Wu did not say that the money was in return for this thing that I had done.
55. I believe the money was in return for what I had done because I know that they (Iris Chen and Jimmy Wu) are quite mean, they are selfish, they cannot give \$2,000 to anyone else, or give it to Bill just to say it is help for his mother. I am aware that a copy of Bill's bank statement from the ASB is found at **Tab 4** of the **Exhibit Bundle** and I have seen this bank statement.
56. Bill has told me that he has not had any other money from Iris Chen and Jimmy Wu like that. The only other money they gave him was a long time ago when he was doing a lot of work for them. At that time, Iris Chen and Jimmy Wu gave Bill \$1,500 as a gift to help him buy a car that cost \$3,000. But at that time Bill was working for them and was also working each weekend for them, working on-call 24 hours, seven days a week
57. In July 2007, I went back to China to visit her family. I stayed for a few months in China and then in September 2007, I went to see Bill's parents in the Fujian province. I gave them the \$2,000 along with other money, which was \$6,000 total. I did not tell them much about the money and I decided to say that it was from Bill and from me. At first Bill's parents refused the money and then on the second time they accepted it.
58. I came back to New Zealand in October 2007.

59. Bill and I stayed renting at 34 Taharoto Road during 2007, after the things I have explained above in relation to the documents about 34A Taharoto Road.
60. I did not realise that I had "bought" the house at 34A Taharoto Road and that it was successful. This was different to what I was told by Jimmy Wu and Iris Chen who had told me it would not be successful. Also, I did not realise that because I signed another document that, I had then "sold" 34A Taharoto Road to Mr Sang Jo Lee.
61. I did not know Mr Sang Jo Lee, the new owner of 34A Taharoto Road and I have not met him. I have now heard about him because about 2-3 months ago I found out that he bought 34A Taharoto Road just a few days after I had signed the papers in April 2007, and I found out that he paid a lot of money (\$775,000) for the property.
62. Bill and I tried to get his contact details to speak with him so that we could find out what was happening but we did not speak to him. Bill and I found this out because we asked a friend who works in Real Estate to make the search for us on the RPNZ website. I also know that Sang Jo Lee was unhappy and that he complained to the Real Estate Institute and that was when the investigation started. I know about all of this because Bill and I have been approached by Jimmy Wu and Iris Chen and I will explain that at the end of this document.
63. I was never given copies of any documents that I signed. I did not get a copy of the first "Agreement for Sale & Purchase" dated 5 April 2007, which was when my name was the purchaser, and I did not get a copy of the second "Agreement for Sale and Purchase" dated 10 April 2007, which was when my name was the vendor."

Dealing with the affidavit of Bill Zhu:

- "78 But later in the year, maybe in August 2008, we started to have problems with Iris and Jimmy. Jimmy Wu rang our house and spoke to Grace, but said that he wanted to speak only to me. I was not home at the time he rang. When I got home, Grace told me that Jimmy was looking for me urgently. I called Jimmy back and he asked if anyone had been looking for Grace. I said no and Jimmy told me that the new owner, Sang Jo Lee, was looking for Grace. He also said that there would be a problem for Grace with the IRD because she did not pay tax and that if the IRD found out then she would pay some tax or fine.
79. Jimmy also said Grace was not to speak with anyone about what had happened about the sale of the house at 34A Taharoto Road.
80. A few days later, Jimmy and Iris asked Grace to go with me to their house to visit them. Grace would not go. So I went to their house by myself. Iris and Jimmy said that they wanted Grace to sign another document. They wanted Grace to go to Hong Hu's office and make a statement saying that she gave Jimmy Wu and Iris Chen the authority to purchase the house and sell the house for her. That is the house at 34A Taharoto Road.
81. Iris also said to me that they had copies of Grace's signature and that Iris could copy the signature if Grace would agree to help. Iris said Grace could give Iris authority to sign. Iris said that otherwise, she would not copy the signature if Grace did not give authority, because then there would be a problem. I did not say anything to Iris but I did not like this.
82. I went home and told Grace what Iris and Jimmy wanted. Grace said no, that she would not help and would not sign any more documents, and that they would have to talk to our lawyer.
83. I told Iris and Jimmy that Grace would not make the statement or sign anything else. I rang and then talked to Iris on the phone. Iris was not happy about Grace.

Iris said something like "Why can't Grace help us, she should help us, why didn't she help us this time?"

- 84 A few days later Iris rang again when I was working at Foodtown. She said there could be a problem for Grace about IRD and tax. I said I will talk to Grace about it. But I was thinking it was not about us and she was just trying to make us worry.

It is now convenient to record the transcript evidence taken by the Institute's investigator, Ms Charlotte Gerrard.

Prestige Protection Limited

TRANSCRIPT OF INTERVIEW OF JIMMY WU

- Q: Just as an introduction, first of all its Thursday 14 August 2008 and its 3.45pm, I'm with Jimmy Wu at Access Real Estate in Rosedale Road, Albany. Jimmy first of all can you just acknowledge you are aware I am recording this?
- A: Yes
- Q: And you have given me your permission to record?
- A: Yes
- Q: And you understand that if at any time you don't understand what I am saying to you that you will let me know?
- A: Okay
- Q: And likewise I will do the same with you.
- A: No problem
- Q: First of all, I just want to get a little bit of background. I understand that you are the principal officer of Access Real Estate?
- A: Yes.
- Q: And you trade as Ray White and you have been in this premises at Pinehill for about two years?
- A: Yep
- Q: Right two and a half years. And you have been in real estate for five and a half years?
- A: Yes
- Q: Now Jimmy I would like to talk specifically today about a transaction that occurred at an address of 34A Taharoto Road in Takapuna. Do you know that address?
- A: Yes
- Q: What is your knowledge about that address?
- A: That property because I own property in front.

Q: You own 34?

A: 34 yes.

Q: And did you, what's your knowledge then?

A: 34A Taharoto Road is the property behind my property and the owner used to have the Chinese tenants on that.

Q: Who was the owner?

A: The owner is, I can't remember the name now.

Q: Would it be the Whetton?

A: They have office in Takapuna.

Q: Gary Whetton?

A: Yes. I dealing with his wife.

Q: Jane Whetton?

A: Jane yes.

Q: And so what happened?

A: What happened is that the tenants there used to be my cleaner and I know from him and vendors not happy with them stay there and they said they wanted to sell the property.

Q: Did you know Jane Whetton well?

A: No. I just got phone number from their tenant.

Q: So did you telephone Jane Whetton?

A: Yeah, I call her.

Q: Why?

A: Because my tenants want to buy that property.

Q: Your tenants?

A: My tenants, in 34 because of the neighbour all talk to each other every day. They know each other.

Q: So you had tenants in your place at 34, the people at 34 were Chinese tenants as well?

A: Yeah. Jane's tenant is my cleaner, does the lawn mowing everything for me in my house.

Q: And it was, but it was your tenant in 34 that wanted to buy the premises at 34A?

A: Yeah.

Q: And what is your tenant's name?

A: I can't remember the name but they already move out a long time and I think it's on the

Q: So is Hui Yang Wang your tenant?

A: I think that's the one.

Q: So you called Jane Whetton and did you say that you wanted to buy the premises?

A: We told them we have someone wanted to buy. I said we want to buy. Not saying I'm going to buy. And I think they yeah.

Q: But it was your tenant Hui Yang Wang wanted to buy the house?

A: Yes.

Q: So you rang Jane and said we want to buy your house?

A: Yes.

Q: And we being who?

A: Yeah we, because you know they can't speak English well so I just don't want them to say anything as I said, actually I remember I did tell them that someone else wanted to buy. But I think the finance company, we put a note on needs to understand.....we supposed to give them our business card.

Q: So you met with Jane did you?

A: Yeah we met with Jane.

Q: And you gave over your business card?

A: Yeah because we tried to, yeah it's a long story. Because we are neighbour we tried to.... Got a lot of bamboo over there, we tried to get rid of bamboo and...and the first time I rang Jane is to get rid of bamboo... we said can we share half.

Q: Makes sense.

A: Yeah, makes sense and Jane come back to me and say no I'm not going to pay it. I said well if you don't want to pay, I pay to do it, then I do the fence and get rid of some bamboo... the first time I met Jane. That's why I know Jane's number. The first time of get the number not for the buying house, for sort out the fence.

Q: I understand.

A: So they... because we know... talk to my tenant and they say he might think to buy. So when I talked to Jane that's it.

Q: So who negotiated with Jane to buy the house?

A: Yeah I mean I bought it.

Q: You negotiated on behalf of your tenant?

A: Yeah.

Q: Did Jane know that it was the tenant that was buying the house?

A: I didn't tell Jane.

Q: So Jane perhaps believed you were buying the house?

A: Possibly. Because that's a private deal and not go through the company.

Q: So when you came to an agreement and you put the name of

A: This is not my name on that.

Q: No but who filled this out?

A: It was me.

Q: So Jane was under Riviera Properties Limited?

A: Yeah

Q: And this is the Sale and Purchase Agreement?

A: We leave it empty for them to

Q: Whose handwriting is this?

A: I think it is my wife handwriting because my handwriting is quite rough.

Q: So she's got the job of filling these out?

A: Yeah filling out.

Q: So I am just showing you here.

A: And she put that... we just put make an offer for that.

Q: So your first offer.

A: And we would talk to them. We are not holding the contract. We drop contract to them and they filled this later, they say okay and they send back to us. So they know who is the buyer because they got our business card, the name is not our name on that.

Q: I don't have a problem at the moment. So I am just trying to work out what happened. So you negotiated with Jane on the telephone and you made an offer, is that right, for her house?

A: We produced an offer to them.

Q: It looks here that the first offer that is made is \$630,000, okay?

A: Yeah

Q: And they have come back at \$650,000?

A: Yeah

Q: And then you've both agreed at \$645,000?

A: I sent back to us and we bring back to my tenant and they say oh the maximum is \$645,000 they can pay and we dropped the contact to them. They got no answer for a few days nearly one week.

Q: But is it correct that the final purchase price is \$645,000?

A: That's correct.

Q: Now your tenant Hui Yang Wang, was his intention to live in the premises?

- A: He wants to live there at the beginning, because the house is quite big and he is international student she got a lot of class mates friends that want to live there. That's why this house has got lots of rooms and if he buys that, he can rent it out; he can cover the mortgage with what he gets.
- Q: But how was Hui Yang Wang going to afford to buy the house?
- A: She told me her father would give her money. In the beginning he believed her father would send the money to her until she sign the contract unconditional, when the signed she would ring her father and father is not happy, he said you can't buy so big a property in New Zealand. Her father got money but he doesn't want to give to her and she was panicking and comes back to us and said, oh my father don't want to give us the money. Can you sell it for us? So we go and sign the listing form but that's not privately but on system, we go to the system go to system, when you go to system everybody can see that information.
- Q: So this, you have just taken this from the system, is that right?
- A: Yeah.
- Q: So you've got an unconditional contract dated 5th of April for Hui Yang Wang to buy it?
- A: Yeah
- Q: But her father says no.
- A: He said that you can't buy the property, I not give you money, you better sell it.
- Q: So Hui Yang Wang then asked you to sell it and so do you then have a listing, where's your listing authority?
- A: Yes I have. We've got a listing on, looking at the system, on
- Q: 4th of May?
- A: Yeah, 4th of May.
- Q: But this is dated the 5th of April.
- A: Yeah
- Q: That's like a month after and you've also meant to go conditional, go to settle on the 3rd of May. So according to your
- A: ... go to the system, remember we have listing authority let's go to the system.
- Q: So according to these dates here, this was settled on 3rd of May and you got the listing on the 4th of May.
- A: Looking at the system doesn't mean date of the listing date. It is the date the reception put on the system.
- Q: But is says, okay well we will wait for that document. So when you, Hui Yang Wang, is she a relative of yours?
- A: Nothing to do with me.
- Q: Any relative of a
- A: No. Nothing to do with me.

Q: Did you suggest that she gets the premises valued?

A: Yes, I told her, because the vendor is saying that they want to sell on that price, I thought this was a very good price. Because on that street in Takapuna 900 something square, it's a very, very good price. It could be able to sell for \$700,000. But because the owner doesn't want to go real estate company. At the beginning I want to get the listing I say I can I sell the property for you, they say no, no we have agent already. She told me she's got an agent from Prestige or somewhere and I said is agent. I asked her was the suggestion, what did the agent tell you. Be able to get \$650,000 yet from Prestige.

Q: The agent told Jane that they could get \$650,000?

A: Yeah. But I think that numbers low because it might get a little bit lower price and make it easy to sell.

Q: Did you, you obviously know this property fairly well because you own the house in front.

A: Yeah. I bought for \$400 something.

Q: But is this property a good buy to make money on?

A: Depend on

Q: Can you renovate, is it a do-up or is it subdivideable or

A: The land is big enough for subdivisible.

Q: Just for the 34A?

A: Yeah

Q: Or is that both your house and?

A: No, no just 34. Just 34A is big enough because I've done lots of subdivision I know that, even they say that misleading on subdivision that's wrong, that's correct. But I want to say this, all the information I give, not I give to the buyer directly because at that time Richard Kang, the selling agent, is not working Access Real Estate.

Q: I'll get to that in a moment. I think we just need to move slowly through. I just want to find out in your experience whether you believe that that property is subdivideable?

A: I believe yes.

Q: You believe yes. Okay. On what basis do you believe it is?

A: On North Shore City Council District Plan in 4A zone. 450m2 without resource consent you can do subdivision and 400m2, you can do subdivision with resource consent. That's North Shore District Plan saying.

Q: North Shore District Plan?

A: I have property in Takapuna, that 920m2 I do subdivision myself. So I don't involve lots and lots of subdivision, I know.

Q: You know what it involves and okay, so we now move on that Hui Yang Wang wants you to sell the property because she can't buy it.

A: Yeah.

Q: So what do you do then?

A: We just get the listing and tell the agents this property available for sale.

Q: And was there anybody, were any of your agents asked to sell it in particular?

A: Sorry can you say again?

Q: Did any of your agents, any of the real estate agents take it up in particular? Was anybody assigned to selling this property?

A: Get a listing?

Q: Yes.

A: Yes we have.

Q: Did you sell it or did somebody else?

A: Somebody else sold it.

Q: Who was that?

A: Richard Kang.

Q: Now who is Richard Kang?

A: Richard Kang is a Korean agent working.....

Q: Working?

A: The Knights Limited.

Q: How do you spell that?

A: Richard Kang is working The Knights Limited. Real Estate company in Milford.

Q: Used to be Ray White Milford?

A: Yeah. Same Ray White but different company.

Q: Okay. So Richard Kang, how did he become involved in this property?

A: Because Richard good agent, normally we have the new listing, we just tell good agents, oh we've got a new listing do you have a buyer. Normally we send it by fax, I can't remember what I did at that time, normally I call him. Richard Kang is very, very good agent.

Q: Is he, have you worked with him a lot?

A: Richard Kang, honestly this is the first deal I did dealing with Richard. I never deal with him before.

Q: But you knew of him?

A: Yeah, because Richard Kang is normally work for Mario Park Mario Park is... and Richard Kang is Mario Park's PA and I know Mario Park very, very well.

Q: Mario Park, and who is he?

A: He is agent, another agent. Richard Kang is Mario Park's PA

Q: I see.

A: Yeah, so normally I talk to Mario, I just ring Mario, I have a property if you have a buyer please bring over.

Q: And Richard Kang works along side Mario?

A: Yeah. In Milford.

Q: So Richard Kang gets to know that 34A is up for sale?

A: Is available for sale.

Q: And does he find someone? What happened?

A: He find somebody else.

Q: And is that person Sang Jo Lee?

A: No, yeah, yeah I think that's the people. Because we don't know what's happening between that side, because he sell the property to his client and I not to talk to client directly but in Ray White's system if you have a buyer you, the selling agent and getting listed buyer....vendor.

Q: Jimmy, did you act on behalf of Hui Yang Wang as the vendor for this property?

A: No. Definitely not.

Q: Are you sure?

A: Yeah definitely.

Q: The reason I ask that is because Mr Sang Jo Lee says that all times be believed that you were the owner.

A: No I'm not the owner. Definitely not.

Q: Okay, but did you do the negotiation for your tenant?

A: No.

Q: Did you have any involvement with the sale of this property to Sang Jo Lee?

A: Involvement, that got to countersign in Ray White system when they got the offer or the contract give listing agent, this presented to the vendor and then get countersigned, we drop back to the selling agent, not go to the buyer directly. It is not allowed to do that. You go to the agent, the agent go to talk to them.

Q: So who acted for Hui Yang Wang?

A: Herself.

Q: As the agent, which agent was acting for her?

A: Iris.

Q: You did?

A: No, Iris.

Q: Who is Iris?

A: Iris my wife.

Q: Is that Iris Chen?

A: Yeah.

Q: Okay. So Iris acted for Hui Yang Wang on behalf

A: Not on behalf. Agent.

Q: Okay. So this Sale and Purchase Agreement here is dated 10th of the 4th, 10th of April which would fit in with what you've just explained, that was the 5th of April and you said a few days after had to sell it?

A: Yeah.

Q: Okay so now we've got the 10th of April. What I am curious about is how you got to the original purchase price of \$750,000, where did this figure come from when it was just sold, you had an unconditional contract four days before for \$645,000?

A: Yes, yes, I tell you what, because the, I think Hui Yang Wang got a very good buy and as a listing agent where our responsibility is to get a best price for the vendor. And because we get commission from the vendor, so we just get highest possible we can get for my listing agent does that.

Q: But with a private deal that you had with Jane Whetton do you think that she got a fair price for her house?

A: Because that is what she want. Because another real estate agent give her a suggestion say \$650,000 they get for her, that is why we offer that – and not far away from the \$650,000 so we know that, somebody else wants – because we are not getting commission between that so we think somebody want to sell, somebody want to buy, just go and do it.

Q: How do you get to the price, the purchase price of \$750,000, how did you come to that amount?

A: Because.

Q: Do you compare with like houses or?

A: Sorry

Q: Do you compare with other houses that were sold for that amount?

A: Yes we sold lots of property.

Q: So will you be able to show the Real Estate Institute that at that time on the 10th of April, around that time, April 2007 that similar properties were sold for that amount?

A: I could find out.

Q: I just want to know whether this was something that

A: In Karaka Street, I understand it half section brand new house is built so for \$800,000-\$780,000 something and we, half section in Karaka Street is over five hundred something, so that's two sections.

Q: We can easily look up anyway on the Property Guru.

A: Or RPNZ find out, Karaka Street, half section over five hundred.

Q: But these are half sections aren't they?

A: No.

Q: They are both full sections?

A: Both full section. And this one can cut into two sites. 960m². If you say 500m², half section maybe 450 with a house on it, so for five hundred something. Two bedroom units are selling in Karaka Road for normally high three to early four. Only two bedroom units, yeah.

Q: So that's fine. Now Mr – you were acting as the agent for Hui Jang Wang and Richard Kang was acting for Sang Jo Lee, did you tell Richard Kang about this deal that had happened five days before?

A: No.

Q: So just to clarify, was Richard Kang aware that the property had sold for \$645,000?

A: No he didn't

Q: He didn't know. Okay So he is acting – could he have found that out from anywhere?

A: I don't know.

Q: I mean, I know that Property Guru shows the figures that it was sold for but because it hadn't gone, hadn't settled it wouldn't be registered?

A: No it would say on there. This happen all the time, you know we selling sections from ... I sell might be 40 sections over there, but because the property values gone up, so first people buy to the last people, the most that more people are doing, four people in the middle and we sell section first one for \$200,000, \$180,000 and the last people sell for \$300,000. Nobody knows.

Q: What happened in between?

A: Doesn't even know because that property, if you want to buy it go and buy it. This happen all the time.

Q: I understand. The reason I am asking you this is because this is part of the complaint that has been made, that Sang Jo Lee is saying that he has paid over \$135,000 more in the space of four days for a property. But I am just explaining to you what he is saying to the Real Estate Institute. I think you have a copy of the

A: I have a copy of that.

Q: So you know what his complaint is. Firstly, that he was not aware that the property had been sold four days before or five days before for \$135,000 less than he paid and secondly,

A: I didn't say that because I don't if Iris has told him or not, I didn't

Q: Do you think that Iris would tell him?

A: I don't know.

Q: From what you have just said to me there is no reason for her to tell him.

A: As from my personal opinion because I am not listing it, Iris is listing it. I didn't ask because they no ask, if they ask then we will tell them.

- Q: But if they don't ask, I mean I believe and I understand that Mr Sang Jo Lee who is a Korean has no experience in purchasing property in New Zealand before and
- A: I don't know. I know nothing about him. I don't know anything about, who is Sang Jo Lee, I haven't
- Q: But you have met him though?
- A: I met him once but I never talked to him. I didn't talk single word to him.
- Q: You met him down at the property.
- A: He want us to open the door and open the door that's it. When they finish I lock the door and I go away. Because he speak Korean, I don't.
- Q: I accept that. I couldn't understand it either. I just want to point out to you the valuation and sales report on Property Guru and just to confirm that these are what we are talking about, on 5th of April 2007 this is the sale to Hui Yang Wang and then on the 10th of April this is the unconditional agreement sale for \$775,000. You can perhaps, if you put yourselves in Mr Lee's shoes you can understand that he would be very aggrieved at this. He would be very cross.
- A: That's happening all the time in real estate. If you can tell you several cases where this has happened when working... office I sell a piece of land in Seaview Avenue, that 81 Seaview Avenue, I sold for \$2,2m possibly and also in one week's time and somebody else wants to buy and paid \$600,000 more. All the sections in Pinehill and if you go to research people buy for, might be \$280,000 and the first ones and the second ones pay \$350,000. Because the market at that time was very strong. It's going up like that.
- Q: Not so now.
- A: Never ever know what's happening on that, even go to Epsom. Sometimes you buy \$1million and second day \$1.3million sold. It is very common in the real estate.
- Q: I understand what you are saying and I accept that, but I just want to put to you Mr Lee's complaint and I hear your explanation. Now Mr Lee, his complaint was about the difference in pay and also that the client, Mr Lee, says that he was told that the property was subdividable, I know we have touched on this before
- A: But I sorry the land is subdivisible but I didn't tell Mr Lee
- Q: I'm saying that he was told and in your experience you say that you believe it should be.
- A: Yes.
- Q: No he says that he has had some advice that it can't be subdivided because there is a stream running down the back.
- A: The previous owner did have a plan.
- Q: The Whetton's did?
- A: The
- Q: Jane Whetton?
- A: Yeah. We thought we can cut it into two sections, I already done most of the job and I even got the....
- Q: So perhaps his advice is not correct that he has been given?

- A: Possible. But the land is big enough. Definitely big enough.
- Q: So even if you knew no different would you still advise Mr Lee that it was subdivideable if he was your client?
- A: If he is my client I would say that.
- Q: So you believe that it is? Okay. Look Jimmy I think that I have just about finished what we need to do and I would be, there are some things that I would like please from you, is I would like to see the listing authority.
- A: I will go and get it.
- Q: Also I would like you to give me Hui Yang Wang's details. I need to speak to her.
- A: Yes is student and after gone somewhere, can't find anyway. I tried to contact her but I don't know where she is.
- Q: Is she still in New Zealand?
- A: I don't know. She is International student. Chinese studying, I don't know, Auckland University.
- Q: It's a girl, Hu Young win?
- A: It's a girl.
- Q: You have no idea where she is?
- A: Family got some money, but I can't find.
- Q: You have no forwarding address?
- A: No.
- Q: When did she leave your house?
- A: More than one year. One year's ago. I don't know go back to China or still in New Zealand I don't know.
- Q: But if you could get that listing – what I will do Jimmy is I'm going to stop this now. Are you okay, is there anything you want to say before we stop?
- A: Yes
- Q: Are you happy for me to stop?
- A: Okay
- Q: Do you want to explain what you have just said?
- A: Letter is saying you know, sounds like, looks like I working together with Richard Kang to talk to client but that's not, I never ever talk to the buyer.
- Q: But it was only from you telling all the agents that this property was available?
- A: Yes
- Q: Richard Kang became aware.
- A: I tell Mario Parks

- Q: You tell Mario?
- A: I even didn't talk to Richard Kang, honestly this is the first deal I did with Richard and before that I even – I heard the name Richard Kang but I never talk to him.
- Q: Okay. So there isn't a joint sale?
- A: Sale
- Q: No joint sale?
- A: No joint sale.
- Q: Independent?
- A: Independent yes.
- Q: And as a result of this did you or Ray White or Access Realty get some commission?
- A: Yes we get half.
- Q: Share with Richard Kang?
- A: Share with The Knights
- Q: With The Knights yes?
- A: Yeah
- Q: Okay
- A: We pay half to The Knights because they half the job and we done half the job.
- Q: Alright. Unless there is anything else that you feel that you would like to say?
- A: I don't know what I like to say.
- Q: I think we've covered?
- A: Yeah. I want you to know if they refer to you or the letter my lawyer write to them?
- Q: No I've got, I haven't got any copy of the letter from your lawyer.

The Board notes Mr Wu's two denials of knowledge as to the identity of Bill Zhu and Grace Wang

"I can't remember the name....."

Further Mr Wu denied acting on behalf of Hui Yang Wang ["Grace Wang"] as the vendor of the property when Mr Wu was the master of the situation controlling the purchase and on-sale of the property under the name of Hui Yang Wang.

Finally Mr Wu denies the fact of a joint sale of the property through The Knights Limited against the contrary documentation evidencing Access Real Estate Limited and proven receipt of part of a commission.

The Board now records the transcript evidence in relation to Iris Chen.

Transcript of interview of Iris Chen

Q: It's Thursday the 21st of August 2008. I am with Iris Chen at Ray White in Pinehill. Iris can you just acknowledge first of all that you are aware I am recording this and you are okay with that?

A: Yes

Q: And I have explained to you that if you don't understand anything that I say that you will let me know and also if you feel uncomfortable about this let me know?

A: Okay.

Q: Now Iris, can you just let me know what your position is here at Ray White in Pinehill?

A: I am sales person and also franchise owner

Q: And you are the wife of Jimmy?

A: Yes

Q: And how long have you been here?

A: I think only 2 ½ years.

Q: How long have you been in real estate?

A: Over five years. I start in Ray White Takapuna

Q: So you moved here when you were able to buy the franchise?

A: Oh yes.

Q: Busy time?

A: Very busy. 24 hours a day. Very busy especially in this tough market

Q: Yes it must be very hard for you.

A: Yes very hard.

Q: Now Iris, I have been asked to look into a complaint that has been made by Mr Sang Jo Lee. This complaint has come to the Real Estate Institute through Mr Lee's lawyer which is Richard Allen Law. Now, have you seen a copy of the complaint that Jimmy had?

A: Which one?

Q: It would have been on paper similar to that, it would have looked similar to that?

A: I think I already seen it from our lawyers.

Q: That's right your lawyer would have, and then your lawyer replied. Now the complaint is directed at Jimmy and also Richard Kang and there is basically two parts of it that they, he didn't know that the property was on-sold between five days after he bought it, sorry he bought it five days after it was on-sold.

A: He didn't know that.

Q: He is saying

A: The buyer said.

Q: Okay just let me explain what the complaint is and then we will go through what he told – so the complaint is that he didn't know that and the second thing is that he didn't know that the property was not subdividable. So that is the two basis of the complaint. Now this is what I want to talk to you about. Can you please tell me what your involvement with Sang Jo Lee – let's start off, what was your involvement with 34A Taharoto?

A: In that time I am the listing agent of that property.

Q: For who?

A: For Miss Wang

Q: Now I understand from your husband that this property is behind a property that you and he own?

A: Yes

Q: Okay, now do you know who owned it before Hui Yang Wang?

A: Oh yes

Q: Who was that?

A: I remember the name of the lady Jane.

Q: Jane Whetton?

A: I can't remember who

Q: Whetton

A: English names are hard to... I only know it's Jane, we call her Jane.

Q: Now what dealings have you had with Jane?

A: At the beginning because we own the property number 34 Taharoto, which is the front one, and it's got a big bamboo between us and we tried to find the other owner of next door so we can share the cost to do the fence and that's why we knock on the door, was the next door 34A and find a tenant tell us they not the owner but they said they moving out because the landlord told them they want to - no they said it cost too high, something like that and also tell us they know our agent because I have given them my card and they said the landlord might be wanting to sell.

Q: So the tenant at 34A told you

A: Chinese.

Q: So he told you, he or she told you that they thought the owner, Mrs Whetton, or Jane Whetton

A: Didn't say Jane

Q: Just said the owner might be wanting to sell?

A: Yeah

Q: So when you got that information what did you do?

A: We never thought about it but between but because our tenant feel not safe, there is no fence between their property and our property so they know the conversation between the Chinese tenant of next door and us.

Q: So your tenant at 34A knew.

A: No, no 34

Q: I beg your pardon, your tenant at 34 knew of this conversation and knew that

A: I can't remember exactly but that things has happened a long time ago. I think we knock on the door first and talk to the tenant of next door and they tell us the landlord willing to sell and also tell us how much they pay for, already told him, I can't remember exactly and they would talk to our tenant, were going to do the fence, might be next door willing to pay money to us and ask them to wait also tell me might be for sale some time. Something like that.

Q: Who was your tenant?

A: Miss...

Q: Hui Yang Wang?

A: Yes

Q: Who was she? Is she a friend or

A: No. Just a tenant.

Q: How long had she been a tenant with you?

A: Honestly I can't remember.

Q: Approximately, are we talking years or months?

A: More than that. Because while we bought the property is very, very bad position and we do up, spend money to paint or something, then we advertise it – I can't remember because we are so busy. I can't remember what date, exactly how long. When that finished we put it advertise it on Chinese web and the Chinese newspaper to look for tenant.

Q: So this is where Hui Yang Wang came from?

A: Yeah, yeah. Honestly I can't find, I never find the Tenancy Agreement....

Q: When Hui Yang Wang moved in, did you know her before she moved in?

A: No.

Q: So she is not a friend?

A: Oh no definitely not.

Q: She not a relative?

A: No. You can see from the Chinese culture if we her surname should be something connected should be but no hundred percent.

Q: I realise that. So Hui Yang Wang moved in and she got to know that 34A might be for sale, is that correct?

A: Yes later on. Not at first.

Q: Not immediately?

A: Yeah

Q: What did Hui Yang Wang do? Was she working?

A: At that time she is studying nursing at Massey University I think.

Q: And was she working?

A: I don't know

Q: She didn't work for you?

A: Oh no, no definitely not.

Q: And she wasn't a relative obviously we have covered that?

A: No

Q: So what happened then?

A: After that?

Q: Once she has found out that the house behind might be for sale, what happened?

A: She said she was going to buy it but because she know we are agent as well and Jane know we are agent as well but Jane not want to put her house in the market we can't get a listing. And she always sell the property, just do a private deal. She don't want to pay the agent commission. And we call her the first name Huiyang Chinese name, she said that she ask us to deal with Jane.

Q: Negotiate?

A: Yeah negotiate because she might trick her something like that.

Q: So who did the negotiation?

A: Jimmy. But I always with him in the car.

Q: And what was the first asking price by Jane?

A: Jane said her friend in Professional or Barfoot, I can't remember, just said she got a friend who give her a price of \$650,000 on that property but I know from her tenant because I know from her tenant and they only pay \$600,000 or \$602,000 something a year before.

Q: You can find that out anyway?

A: I can find it but I can't remember now. And her tenant has said Jane also ask her tenant if they buy the property but I think \$620,000 something and that when we talk to Jane about this sell the property, she said \$650,000 what her friend told her. Miss Wang also know that.

Q: So you start off with.

A: \$630,000 I think.

Q: And then you eventually buy at

- A: \$645,000 I think. You see the counter offer \$650,000
- Q: Now did you do negotiations before a Sale and Purchase was filled out? Did you talk with Jane?
- A: No I can't remember.
- Q: The reason I ask that is because Jane told me that she originally said \$700,000, she wanted \$700,000 and it was through negotiations with yourself and Jimmy or Jimmy that she finally got to \$650,000 was first put on there. Do you recall that?
- A: Looks like, yes, yeah, I believe when I tell her – because we got permission from her tenant Jane can't find her tenant contact number I think and., because her tenant tell us he just want \$620,000.
- Q: So when, whose writing is this on the Sale and Purchase Agreement? Now just for the record, it's the agreement between the vendor being Riviera Properties Limited and the purchase being Hui Yang Wang?
- A: Yes my writing. This Hui Yang Wang looks like not my writing.
- Q: So which, just point for me please Iris which is your writing?
- A: This is my writing.
- Q: So the address and the vendor details?
- A: Yes
- Q: And who has done this crossing out of the prices?
- A: Crossing out between negotiation was Jane and Miss Wang. That's not my writing.
- Q: That's not true Iris because Jane has never met Hui Yang Wang.
- A: Yes that's right. But offer give to her and
- Q: I realise that, but who has
- A: That is my writing
- Q: I understand
- A: When Jane finish her one and we took that to our tenant.
- Q: Okay
- A: But definitely is not my writing. The possession date and that one is not my writing.
- Q: Whose writing do you think that is?
- A: That is Jane's writing I think. This my writing, this is not my writing. The date is not my writing.
- Q: Is there any reason why on the purchaser that you haven't put any contact details for Hui Yang Wang? Whose contact details are these?
- A: Is the lawyer's contact details

Q: But normally when you fill out an agreement you put all the contact details don't you?

A: No. Sometimes not. Because we had a very bad experience – sometimes Korean with Korean or Chinese together so before settlement they talk to each other, they cause problem. Because with settlement they only have one right to go back to the property as the final inspection but if they know each other from a phone number they will talk to each other and go back so many times and then come back complain to us, need a problem or need a fix or something like that.

Q: So that is why you don't, I understand.

A: Lawyer will have contact number I think

Q: Now do you recall Jane Whetton's reaction when she saw this Sale and Purchase Agreement? Do you recall what she asked you?

A: What that mean?

Q: Do you recall what Jane asked you when she saw this agreement?

A: Please say that again?

Q: Okay. Do you remember what Jane said to you when she saw this agreement before she signed it?

A: I don't remember, oh you mean when the purchase put \$630,000 what did Jane say.

Q: No Jane asked you who was Hui Yang Wang, do you remember that?

A: No. I don't think she ask us.

Q: She did because she believed that she was buying the property from Jimmy

A: She is selling property to Jimmy?

Q: No, yes

A: Really, I can't remember.

Q: And then when she

A: I am not every time with Jim

Q: But she said that you gave her the Sale and Purchase Agreement and Jimmy said that you did that.

A: Yes. We give the agreement

Q: You went to Jane with this and got her to sign. She said to you who is Hui Yang Wang

A:: I can't remember.

Q: She did, this is what she has told me.

A: Really. I can't remember

Q: She said that you said to her, you said that's my aunt.

A: No definitely. Wasn't my aunt

Q: You know what an aunt is?

A: An aunt.

Q: Auntie yes.

A: No, no, no definitely not, definitely not.

Q: I am only telling you what Jane said.

A: No

Q: Now there is no reason that Jane would make this up or lie.

A: But I definitely not say that. Might be... problem might be but I definitely not say that because I even don't, I know auntie but I never said aunt.

Q: May be that was my interpretation but she believed that Hui Yang Wang was your aunt, your auntie.

A: No. No I don't think so.

Q: Jane Whetton had no idea that Hui Yang Wang was your tenant?

A: She don't know

Q: Alright let's move on a bit Iris, when Hui Yang Wang signed an unconditional agreement here – so what happened to this agreement?

A: What about?

Q: Why did Hui Yang Wang sell the property straight away?

A: Oh. Her parents not agreed after they sign agreement and ring the China her parents had said too much for them. They can't afford to pay and they talk to us how can they do, they sell it – and it would believe it is a very good deal. It is a very good price.

Q: So what happened?

A: Beginning 10 working days init and then change it to five working days

Q: But the property was listed for sale only one day after – I don't understand how you can get a listing agreement when you have got the due diligence of 10 working days and yet Jimmy provided me with the listing agreement which is dated the day after so Hui Yang Wang was not the owner of the property then.

A: Yes. We believe she is not owner.

Q: Now can you please give me the contact details for Hui Yang Wang?

A: I can't find her. Long time ago because when she move out I heard of her she move to Forest Hill or Sunnynook, I don't know

Q: Do you have, do you know where she is studying?

A: She study at that time in Massey University.

Q: At Albany or elsewhere?

A: I think in Albany

Q: How long was she your tenant for?

A: I can't remember

Q: And do you have a Tenancy Agreement for her?

A: No

Q: Why not?

A: We never had a Tenancy Agreement

Q: It's legal, you have to

A: Really?

Q: You have to have a Tenancy Agreement

A: I'm sorry I don't have a Tenancy Agreement

Q: Now when the property was listed again for sale through yourselves, you prepare or you have a listing agreement that – do you have the original of this please?

A: Yes

Q: Where. I will just pause this while you do that. Managed to find it after a while.

A: We have different form, we change the receptionist.

Q: So this is the original. OK. Thank you. We now have a listing agreement dated the 6th April which is the day after.

A: Straight after that.

Q: So just tell me please Iris, what happened, how did this listing agreement come about?

A: I think Jimmy already explain to you, her parents is not agreed, they think it is too dear, they can't afford to and they are panicking on it and they wanted to sell.

Q: But the

A: I think at that time also tell them if you can't sell I might buy because I believe that's a very, very good deal.

Q: So as I see here on the original agreement between Riviera and Hui Yang Wang that there was a due diligence anyway so it wasn't an unconditional contract from that date. How come you didn't just explain to Jane that they couldn't do it if they had this, if it was only a conditional contract?

A: But if somebody can buy that and they can get a little profit then they can just do it. It was an opportunity for us.

Q: So that's why you took that opportunity. So who completed this listing agreement?

A: I completed it.

Q: You did okay and that's Hui Yang Wang's signature?

A: Normally either Jimmy or me get a listing or under my name

Q: Right it's always under your name?

A: Yeah. So you can't find Jimmy's listings on Ray White's website, taken up from up Takapuna

Q: Always under your name, why do you do that?

A: Because we are always together and may be get an award.

Q: I see. He's got an award has he?

A: He never got an award.

Q: But you want the award?

A: Yeah

Q: So when you got the listing, how did you advertise it?

A: Never unless things happen very quick because I've got a listing and we think better to sell it as soon as possible, you know, it's only limited time. So I think Jimmy ring Mario Park or Richard Kang I can't remember what he does and get a contract very quick. Very quick unconditional offer.

Q: So when you got an unconditional offer which is between Hui Yang Wang and Sang Jo Lee, did you, who put the asking price on that?

A: Look, they asking high seven hundred, we think it might be difficult to get that's why we put a pbn – we told him if he put exactly \$790,000 or \$800,000 plus might be difficult because in that short time better to just put a pbn and tell the agent it's seven something like that.

Q: Just explain to me what a pbn is?

A: Price by negotiation.

Q: Of course. So on this contract who put the asking price, who wrote down the asking price?

A: That is not my listing, not my writing, that's in Richard's handwriting, he ... agreement in here. But asking price we didn't mention, I can't remember – I think Jimmy did a mention to you, Mario Park is when they're looking at high seven something like that, is asking price.

Q: You knew that the property had been sold

A: \$645,000 yes. I believe that's a very, very good deal. You know why, when the property sold to, when Mr Lee sold it another company which is our neighbour now because they build a fence, they talk us, they said they got a very, very good deal and check up and they pay for \$755,000, I said oh unbelievable because they are quite happy to do the fence, we share a \$1,000 and at that time Jane don't want to pay us any.

Q: That's her prerogative isn't it?

A: Oh yeah, because in the time we.... It's not safe for our tenant, that's why... that's our one 34 and that's 34A and that time there's bit bamboo here, lots and lots of bamboo and lots and lots of bamboo here. We spend the money, a thousand and something, I can't remember to cut the bamboo down that side of fence and we really wanted to do, let this as well but Jane don't want to share anything. In the beginning she want to share half of that then she change her mind then she said get her builder to do the job and we get a builder come to get a quote, take her quite awhile and we can't wait because not any fence there and Taharoto Street

the tenant has said if people come here they are easy to close and they were very unsafe so we have to make a fence that side.

Q: Okay thank you.

A: After that the tenant, the new tenant, the new owner is different company they cut the bamboo from....

Q: Is that Mr Lee?

A: No not Mr Lee

Q: After Mr Lee?

A: Exactly. After Mr Lee. Another company I think did the fence.

Q: It would be quite smart now.

A: Oh yeah.

Q: A dentist property is it?

A: I don't know what the company. It's security company or something.

Q: Okay. Iris, did you feel happy that \$795,000 as the asking price was a true price for that property?

A: Only can say \$645,000 is a very, very good price for that property and when I took a listing I search recent sale in Takapuna area, it's not bad at that price. You can see after that also sold for \$755,000 and the new owners say it's very good price. I believe in that time it's quite reasonable.

Q: Were you then happy that Mrs...

A: Jane is quite happy when she got \$645,000, she quite happy, yeah because she had, when we talk to her she get lots of headache with the tenant so she wanted to sell, get out of the problem you know. She was quite happy to get \$645,000. I believe she is angry when she know the property was sold for that much. That's the people doing the private sale it's better choice, better to do the marketing you know.

Q: Yeah, but she gave it to you.

A: She's private sale she don't want to give me the listing.

Q: Okay

A: She said she never wanted to pay the agent commission. So want to sell privately.

Q: And did you sell the property for Mr Lee?

A: No. I never know the buyer. I only think meet him once.

Q: Now Iris, in your experience do you believe that that section of 34A is subdividable?

A: Got a potential but need to check with the City Council. I never checked.

Q: Did you tell Richard Kang that it was subdividable?

A: No. Everything like that is check with Council.

Q: Okay Iris, I think that I have finished. Is there anything else that has happened in relation to this that you think is important that we haven't discussed? I think we have covered most things.

A: Yeah

Q: Okay

A: So what kind of schedule we can have?

Q: I'll just stop this

Statement taken by

Charlotte Gerrard 21.08.2008

The Board notes Iris Chen's consistent denial of knowing the identity of the purchaser from Riviera Properties Limited. In particular, the Board observes Iris Chen's evidence on P.39: *"That is not my listing, not my writing."*

THE INSTITUTE'S CASE

Ms Gerrard gave evidence and was cross examined by Mr Waymouth. The Board found Ms Gerrard to be a credible witness

The Institute's case against the licensees and Jimmy Wu and Iris Chen as salespersons is summarised in the submission of Counsel for the Real Estate Institute of New Zealand Incorporated.

- 4.1 Jimmy Wu and Iris Chen deliberately lied to the vendor of 34A Taharoto Road, Riviera Properties, about the true identity of the purchasers being Jimmy Wu and Iris Chen. The named purchaser, "Hui Yang Wang" was a deliberate attempt to conceal this.
- 4.2 Jimmy Wu and Iris Chen used Huiyang (Grace) Wang and exploited her as an intermediary signatory, in the full knowledge that she was never intending, or able, to be the purchaser.
- 4.3 Jimmy Wu and Iris Chen forged the signature on the Listing Authority dated 6 April 2007, to enable the rapid on-sale of the property.
- 4.4 Jimmy Wu and Iris Chen deliberately misrepresented the circumstances of the property to the ultimate purchaser, Sang Jo Lee.
- 4.5 During the course of the sale and purchase process and in recent months, Jimmy Wu and Iris Chen have attempted to pervert the investigation by the Institute during its inquiries into the original complaint filed by Sang Jo Lee
- 4.6 Jimmy Wu and Iris Chen have deliberately lied to, and misled, Charlotte Gerrard, the investigator assigned to this investigation on behalf of the Institute.
- 4.7 By letter dated 4 November 2008, Sang Jo Lee advised the Institute that he no longer wished to pursue his complaint and sought to have the matter discontinued by the Institute.

THE RESPONDENTS' CASE

For the Respondents, Mr William Akel, who replaced Mr John Waymouth, the original Counsel for the Respondents, made the following principal submissions.

Firstly, the Board ought to be astute to the following relevant considerations: the Respondents, according to their Counsel, did not "take advantage of people in a vulnerable position", "breach fiduciary or other legal obligations to a principal or purchaser" fail to fully disclose, breach sections 63 or 64 of the Act, "no-one suffered loss," and the public at large are not effected.

Secondly, Counsel conceded that Iris Chen lacked authority to sign a Listing Agreement in the name of Grace Wang (which was later conceded that Iris Chen had signed the Listing in Grace Wang's name) and that the statements of both Respondents to the Institute's investigators, set out in this Decision, were provided in circumstances that breach the fundamental legal rights guaranteed by the New Zealand Bill of Rights.

Counsel for the Respondents developed this submission on the theory that the Respondents' purchase of 34A Taharoto Road was achieved by the legitimate means of an [undisclosed] nominee and the consequent sale did not involve either of the Respondents in misleading [of Mr Lee] or damage to Mr Lee.

Counsel reminded the Board of the character test of the Sime case and the necessity of the Institute to demonstrate disqualifying personal qualities of character justifying in the public interest, suspension or cancellation.

THE PRIMARY ISSUES

As has been noted earlier in this decision, the Respondents have accepted liability for the issues outline in the applications filed on behalf of the Institute. The Respondents have also accepted all affidavit evidence filed in support of those applications. Further, the Institute has withdrawn its application for the cancellation of Access Real Estate's real estate licence. The remaining matter on which the Board has to decide is that of penalty.

The Board addresses two key issues. First, are Jimmy Wu and Iris Chen guilty of misconduct in the course of their business as licensees to the extent that their conduct warrants cancellation or suspension? Second, are they of such character that it is in the interest of the public that their licences and certificates of approval be cancelled or suspended?

When considering the meaning of the word "misconduct", the Board has previously adopted the interpretation applied by Davison CJ when considering a similar provision in the Motor

Vehicle Dealers Act 1975 (since repealed). In **New Zealand Classic Car Co Ltd v Motor Vehicle Dealers Licensing Board** (1985) 5 NZAR 170, His Honour said:

"In the context of this present Act, particularly s112 with which I am concerned, the misconduct which is required to justify a suspension or cancellation must be something which is in my view wilful. It must be something more than negligence, mistake – it must be something where there is a wrong motive, something which would cause the public whose interest are concerned to feel that the dealer has in fact been guilty of misconduct."

The interpretation of the word "character" in s99(1)(b) of the Act was discussed by Tompkins J in **Sime v Real Estate Institute of New Zealand Incorporated** (High Court, Auckland, M73/86, 18 August 1986). His Honour observed:

"So it is clearly intended that the type of character required to be established under S.99(1)(b) is something of a more serious kind than professional misconduct, or breach of the duties imposed under the Act, although conduct that reflected adversely on a person's character might also amount to professional misconduct or a breach of those duties..."

So what the Board is required to enquire into is the person's character in the sense of their personal qualities, their individual traits, their reputation and aspects of their behaviour that reflect on their honesty and integrity.

The second aspect is that the type of character the person must be shown to have must be such that it is in the public interest that the certificate be cancelled or the person suspended. The adverse qualities in his character relied on must be measured against the public interest in his continuing or no continuing as a salesman. Traits such as dishonesty or gross incompetence may be within this category. Less culpable characteristics may well not."

The Board adopts the approach taken in *Sime* in considering the allegations against Jimmy Wu and Iris Chen's character under both S.94 and S.99 of the Act. This approach is consistent with that taken in the Board's decision in **Action Realty** (REALB decision No. 92/331)

FINDINGS

Applying this case law, the Board finds that:-

1. Regarding the first transaction, being the acquisition by Jimmy Wu and Iris Chen, under the nominal purchase of Grace Wang of the subject property, the Institute could not prove "misconduct" on this particular transaction in terms of S.94(1)(b).

Pre-sale discussions took place between Mrs Whetton and Jimmy Wu over a period of four months from late 2006 to early 2007. Persistently Mr Wu contacted Mrs Whetton expressing a wish to buy the property. He owned the adjoining property at 34 Taharoto Road and said he wanted to rationalise the two. He was open about his occupation as a real estate agent. Mrs Whetton made it clear to Mr Wu that she was not prepared to pay an agent's commission on the sale and freely entered into a

private sale. However, when Mrs Whetton questioned Jimmy Wu and Iris Chen about the identity of the buyer, Iris Chen said it was her aunt. Because the transaction was a private sale and outside S.94(1)(b) this misstatement of fact in itself, cannot bring the transaction within the jurisdiction of S.94(1)(b). But the Board takes into account the conduct of both respondents in assessing their "character" in relation to S.94(1)(c) and S.99 (1)(b) in relation to this particular purchase where both respondents allowed the vendor to believe something that was not true. Lies are never justified. If a nominee is being used innocently, the correct answer to a vendor's inquiry as to the identity of the purchaser is a refusal to disclose, not a misrepresentation of fact. To do so, reflects on the character of the respondents

2. Jimmy Wu and Iris Chen used Grace Wang as a naïve intermediary for their own gain.

The Chair and two members in the original November 2008 hearing observed Grace give evidence. The proposition that no one has been damaged by the Respondents conduct is refuted by the evidence of Grace. At all material times, this witness acted under undue and unjustified pressure arising out of the fact that the older couple had in the past extended generosity to Grace and her husband. In the Board's judgement, Grace was compromised by the Respondents into participating in a scheme with which she did not fully understand. The conduct of Jimmy Wu and Iris Chen in using Grace Wang as a instrument in their private real estate transaction constitutes conduct reflecting adversely on their character in terms of S.94(1)(c) and S.99(1)(b) affecting them both in respect of their respective licences and certificates of approval

3. Iris Chen fraudulently signed the Listing Agreement in Grace's name. The Board does not accept that this was a misunderstood delegation of authority from Grace Wang to Iris Chen. The evidence of Grace Wang reveals her fundamental unease with the proposal of Jimmy Wu and Iris Chen to implicate her in their real estate transactions. Grace Wang expressly refused on a third occasion to sign any ratifying document.
4. Grace Wang and her husband Bill Zhu were subjected to unjustified threats by the Respondents for tax liabilities relating to the transaction, as revealed in their evidence. This is an example of a falsehood being told to secure the objective of the witnesses remaining silent. This evidence is both misconduct S.94(1)(b) in relation to the Lee sale and reflects adversely on character in terms of S.94(1)(c) and S.99 (1)(b).

The Board has in decisions **McNeill** (2007/616) and **Cavanagh, Niall, Raghu** (2008/635), referred to the fundamental importance of truthfulness in all documentation relating to the registration of real estate transactions pursuant to the Land Transfer Act 1952. All participants in this licensing regime must be aware that any falsification of documentation supporting

directly or in an ancillary way land transfer in New Zealand's state-guaranteed title system will not be tolerated by statutory licensing authorities.

Furthermore, the Respondents offered the property for resale to an outside agency to distract from the truth of the situation, that they themselves were involved in the sale. Accordingly, they denied their involvement in the sale even though they held the agency listing and participated in a share of the commission together with the agency for whom salesperson Mr Kang was working.

The Board finds that the tests set in **New Zealand Classic Car** for misconduct in relation to the Lee sale and the character test of **Sime** have been met.

THE RESPONDENTS – AS LICENSEES

The cardinal fact is that the respondents are at the highest level of responsibility as licensees in this existing statutory licensing system. As participants in the system, they both may expect the Institute which carries the statutory responsibility of enforcing the statute to conduct proper investigations into transactions and the related behaviour of licensees in these transactions. Both respondents combined to implement a scheme involving a purchase and sale using an unknowing and growingly unwilling young person who possessed a sense of gratitude to the respondents owing to being helped in the past, together with her husband, by the respondents. The joint attempt to disguise these underlying facts to the Institute's investigator, is behaviour which reflects adversely on their character to the extent that in the public interest, the Board concludes that both respondents respective licences ought to be cancelled. Accordingly the Board orders that the licences held in the name of Yu Jin Wu and Wen Jing Chen are hereby cancelled with effect 7 days from the date of service of this decision.

Regarding the false listing agreement signed by Iris Chen a central element in the scheme of deception against the investigation of the Institute, the Board concludes that this event provides another ground justifying the cancellation of her particular licence. In addition, each respondent is ordered to pay \$2500.00 to the Board within 30 days of the date of this decision.

THE RESPONDENTS JIMMY WU AND IRIS CHEN – AS APPROVED SALESPERSON

As a matter of law, an approved salesperson holds a position of a less responsible standard than that of a licensee, but on the assumption that there is a measure of supervision on the part of the principals holding the licence. The Board seeks to maintain broad consistency when exercising its disciplinary powers with previous decisions. In the recent McNeill decision (2007/616), the Board's decision of an eighteen months disqualification was upheld in the High Court. In that case, there were grievous features of character involving deception

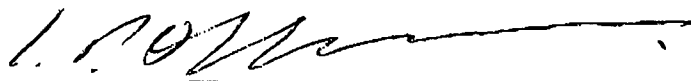
of a vulnerable vendor and attempts to disguise the consideration paid for the property by a subsequent purchaser.

The Board recognises that neither the vendor, in this case, nor the purchaser, can be regarded as victims in these circumstances. The Institute's withdrawal of the application against Access Real Estate Limited is a further consideration which the Board takes into account. However, the behaviour of Jimmy Wu and Iris Chen in the use of Grace Wang as an intermediary, the clear deceit in the answers given to the Institute's investigator, the unfounded threat of an IRD investigation and the admitted forgery by Iris Chen demonstrate character traits from which the public deserves protection.

The Board concludes that each respondent's certificate of approval ought to be suspended for a period of twelve months. Accordingly the Board suspends the certificates of approval of Yu Jin Wu ["Jimmy Wu"] and Wen Jing Chen ["Iris Chen"] for a period of twelve months, with effect 7 days from the date of service of this decision. On resumption, the Board expects that the successor statutory body will ensure two matters before allowing either respondent to participate in real estate. First, that the two witnesses in this case who gave evidence pursuant to subpoenas have not been penalised by the respondents, and second, that effective supervision of the respondents will be in place.

COSTS

Pursuant to s105 of the Act, the Institute is entitled to costs on the application. If the parties cannot agree, then the Institute is to file and serve a memorandum as to costs within 21 days of the date of service of this decision. Any memorandum in reply is to be filed 14 days after service of the Institute's memorandum



Hon W P Jeffries
Chairperson