

In the Matter of **Part 4 of the Real Estate Agents Act 2008**

And

In the Matter of **Complaint No CA2362314**

In the Matter of 

Decision of Complaints Assessment Committee

Dated this 1st day of April 2010

Complaints Assessment Committee:

CAC No: 100025

Decision of Complaints Assessment Committee

1 Background

1.1 The Licensee, [REDACTED] ("the Licensee [REDACTED]") is a salesperson at [REDACTED] Property Services Limited trading as [REDACTED] Auckland. The Licensee entered the real estate industry in March 2007.

2 Complaint

2.1 The complainant, [REDACTED] alleges that on 30 October 2009 the Licensee approached him and his wife (by telephone) and asked if he could sell their property at [REDACTED]. At the time the complainant and his wife were trying to sell the property by private sale. [REDACTED] declined this invitation but told the Licensee to contact him again in a fortnight.

2.2 The Licensee contacted [REDACTED] again on 13 November 2009. [REDACTED] agreed that [REDACTED] could come around to his property to discuss the possibility of listing the property. A listing agreement was signed with [REDACTED] that day. [REDACTED] was recorded on the agreement as being Agent #2. Agent #1 was listed as [REDACTED]. The complainant states he told [REDACTED] he and his wife did not want to have open homes at that stage and that he would have to make appointments to view the property because there was a dog on the property. The listing agreement was subject to a condition that the complainant and his wife had the right to sell the property privately "to any buyer not introduced" by [REDACTED].

2.3 The complainant alleges [REDACTED] told him he would come to the property the following day and take photos. He did not "show up or ring" although the complainant states [REDACTED] later informed them the weather was not good for taking photos that day.

2.4 The complainant maintains that on 2 November 2009 [REDACTED] telephoned and asked if he could run an open home on 22 November 2009, with the dog off the

property. [REDACTED] is alleged to have told the complainant he had some clients who wanted to view the property. The complainant agreed despite that no photos or advertising had yet been done.

- 2.5 The photos were apparently taken at the open home on 22 November 2009.
- 2.6 The complainant states he telephoned [REDACTED] on 24 November 2009 and asked when photos of the property would be on the website as they had not yet been put on. He maintains he also asked [REDACTED] to change the wording on the advertisement for the property which was on the website, to make reference to the "study". The complainant states that [REDACTED] said he would attend to these matters that day. [REDACTED] put the photos on the website as he had said he would but the complainant maintains he had to phone [REDACTED] to remind him to change the wording of the advertisement to include the study.
- 2.7 The complainant states that on 26 November 2009 he noticed that open home signs had been put up at the front of the property. He maintains [REDACTED] did this without first seeking his authority to do so and without his or his wife's knowledge. He claims that as at that date there had been no advertising about an open home either in the Property Press or on the website.
- 2.8 On 27 November 2009, two weeks after signing the listing agreement with [REDACTED] the complainant telephoned [REDACTED] (Agent #1) for an update and to advise him he and his wife did not want open homes. The agent said he would arrange for the 'agent caravan' to come around. The complainant states he asked for recent sales history for the area and to reduce the price for which the property was advertised by [REDACTED].
- 2.9 The following day, 28 November 2009 the complainant states [REDACTED] left a telephone message on his home phone advising that he had a client who wanted to view the property. The complainant states [REDACTED] did not attempt to contact him, or his wife, on their cellphones. The complainant returned [REDACTED] message at which time [REDACTED] said he would bring his client to the property the following

day. [REDACTED] is alleged not to have gone to the property and nor did he telephone the complainant and his wife.

- 2.10 The agent caravan came to the property on 1 December 2009. The complainant states that [REDACTED] did not bring the information they had requested (recent sales history) with him as they had asked him to do.
- 2.11 On 7 December 2009 the complainant emailed [REDACTED], [REDACTED] Manager at [REDACTED]. He sought to be released from the listing agreement (or for the agreement to be 'cancelled') "as soon as possible". The complainant expressed his dissatisfaction with the service he and his wife had received from [REDACTED] and with the "non contact" from her agents. [REDACTED] replied by email the following day and invited the complainant and his wife to her office to discuss their concerns.
- 2.12 The complainant alleges that at 6.30pm on 8 December 2009 [REDACTED] telephoned him and asked to speak to his wife. [REDACTED] spoke to [REDACTED] and the complainant maintains she had to request [REDACTED] to "stop yelling", several times. [REDACTED] is alleged to have "talked over the top" of [REDACTED] and refused to listen to her explanation as to why she had written to [REDACTED]. The complainant maintains that during that conversation with his wife [REDACTED] told her the property was "unsaleable" and that "no one would like it as it was on a main road and we owned a dog". [REDACTED] is said to have told [REDACTED] she and her husband were "unprofessional". He agreed to cancel the contract and then hung up the telephone.
- 2.13 The complainant's wife replied to [REDACTED] by email on 9 December 2009 and confirmed they wanted written confirmation that the listing agreement would be cancelled, as soon as possible.
- 2.14 The complainant expressed concerns that in the four weeks he had been signed up with [REDACTED], the property had not been advertised in the Property Press; while the website was eventually altered to include reference to the study the wording

was then “changed back” two days later”; and he had only received two phone calls from [REDACTED] relating to the property over that period and all other correspondence had been initiated by him and his wife. The complainant states [REDACTED] [REDACTED] “seemed uninterested in our property even though he pursued us.” He says he feels “disgusted” by the way [REDACTED] treated him and believes it was unprofessional for [REDACTED] to have contacted him after the complaint had been made to [REDACTED].

2.15 As at early January 2010 the complainant and his wife had still not received written confirmation from [REDACTED] that the listing agreement they had signed had been cancelled.

3 Information and Material Considered

3.1 The Real Estate Agents Authority received [REDACTED] complaint against [REDACTED] on 17 December 2009 and referred the complaint to the Complaints Assessment Committee. Pursuant to section 79(1) of the Real Estate Agents Act 2008 (the REAA), on 20 January 2010 the Committee considered the complaint and determined to inquire into it. The Committee was satisfied that although the complaint relates to conduct which occurred both prior to the REAA coming into force, and after, the Committee had jurisdiction under section 172(1) to inquire into all aspects of the complaint.

3.2 The Committee invited [REDACTED] to provide a written response to the complaint and this was received on or around 12 February 2010. [REDACTED] response was comprehensive and the Committee considered it to be compelling and supported to an extent by contemporaneous documents.

3.3 The Committee also received a letter from [REDACTED], [REDACTED] Manager, in support of [REDACTED]. [REDACTED] provided some additional information which corroborated some aspects of [REDACTED] response.

3.4 [REDACTED] in his response stated that on 30 October 2009 he contacted the complainant after viewing a ‘Trade Me’ private sale advertisement (for the

complainant's property). He telephoned the vendors (the complainant and his wife) and asked if he could show the property to one of his clients, as he sells houses in the area. [REDACTED] maintains the complainant declined and told him that they were "not in a hurry to sell" and that they "don't want to pay agent's commission on the sale of their home". The complainant said that [REDACTED] could contact them again in two or three weeks if the property was not sold and he could show it to prospective purchasers.

- 3.5 [REDACTED] admits he contacted the complainant on 13 November 2009; he says the complainant asked him to go to the property, see the house and talk about showing it to existing buyers, and commission. [REDACTED] states that he gave REAA approved guides to the complainant and explained that without a proper listing authority he would be unable to show the property to buyers.
- 3.6 [REDACTED] stated he viewed the property and then gave the complainant and his wife a written appraisal and details of recent sales in the area including properties he had sold and properties currently on the market. The current market conditions were discussed, he says, as was the price the complainant and his wife had paid for the property and the amount they had spent improving the property. [REDACTED] maintains the complainant and his wife wanted to achieve around \$430,000.00 in the hand after paying the commission involved.
- 3.7 [REDACTED] stated the complainant and his wife wanted the property to be listed at \$459,000.00, with them having the right to sell privately. [REDACTED] maintains he told them that would be hard to achieve given the recent history of properties selling close to Government valuation.
- 3.8 [REDACTED] stated he suggested professional photography and some marketing in the Southern Property Press. He maintains the complainant was not prepared to pay for any advertising and said "whatever is free advertising, just do those and see what happens". He stated the complainant did not want to have a For Sale sign erected but [REDACTED] explained it would not be possible to achieve the best price

without one; he says the complainant then agreed to allow a For Sale sign to be erected.

3.9 The complainant and his wife were privately advertising the property for a price below that which they asked [REDACTED] to list it for. [REDACTED] stated he told the complainant that he could not compete if they were advertising the property at a lower price, as buyers would see both advertisements and go privately to the property. [REDACTED] stated the complainant agreed not to market privately at a price below that stated on the listing authority, and he also agreed to remove the photograph which showed the house number and address from their Trade Me listing.

3.10 [REDACTED] provided details of the steps he says he took after listing the property on 13 November 2009;

- a. Erecting a For Sale sign on the fence, he says with the complainant's consent;
- b. Preparing advertisements and arranging for photographs to be taken; he referred to bad weather and rain delaying the photography;
- c. The property was advertised in the [REDACTED] office window and the details of the salespersons provided; details of the property were also available on the [REDACTED] intranet site;
- d. [REDACTED] started talking to existing buyers and gave details of the property to two potential buyers on 15 November 2009; these buyers stated a desire to view the property. On 19 November 2009 [REDACTED] says he contacted the complainant to arrange a time to show the house but due to children, work commitments and a dog on site the complainant was unable to give access. It was then [REDACTED] says he requested to arrange an open home to bring these clients to the property

- e. On 19 November 2009 the advertisement was written and the property was ready to be advertised on the internet sites with exterior photographs only; he says he was unable to enter the property to photograph the interior of due to the presence of the dog. That day the property was listed on four websites;
- f. [REDACTED] arranged with the complainant to do open homes; the first one scheduled for 22 November 2009. [REDACTED] stated he sent 500 open home flyers through the surrounding area prior to the open home;
- g. Photographs of the interior of the property were taken at the open home on 22 November 2009 and were uploaded onto the four websites following the open home;
- h. One of [REDACTED] potential purchasers attended the open home but did not like the property because of its location on a main road and also, gave feedback that the price was too high;
- i. The property was not listed for sale in the Southern Property Press (the first issue it could have been published in was 24 November 2009 due to deadlines). As the complainant was advertising the property at \$20,000 less than [REDACTED] were able to, this issue was still to be resolved and [REDACTED] stated this meant the deadlines for publication were missed. [REDACTED] maintains that no free advertising in the Property Press had been promised to the complainant and his wife.
- j. On 24 November 2009 an advertisement for the property was booked to be published in the [REDACTED] newspaper [REDACTED] (an email showing this was before the Committee);
- k. Also on 24 November 2009 the complainant contacted him by email to inform him the For Sale sign had been taken away by children. He asked about prospective buyers and links to the property on the internet [REDACTED] stated he gave the ID number for the property to the complainant and he

also spoke to him about arranging another open home. The complainant also emailed asking for the wording of the advertisement to be edited to include reference to a study, which [REDACTED] stated was done;

l. In response to the complainant's concerns about the message he left on their home phone on 28 November 2009 indicating he intended to bring a prospective purchaser through the property, he stated he did not call their mobile phones because he was "right near the house at the time and I knew that if the vendors were not home, there would not be time to arrange an appointment as the prospective buyer had a limited amount of time." [REDACTED] [REDACTED] stated they viewed the property from the road and the prospective purchaser decided he did not want to proceed any further. [REDACTED] acknowledged he did not inform the complainant that the prospective purchaser was no longer interested and believes he should have;

m. On 1 December 2009 [REDACTED] arranged for the [REDACTED] 'team' to view the property; one of the complainant's relatives opened up the property and the dog was tied up.

3.11 [REDACTED] stated that over this period the complainant and his wife were marketing the property privately for \$439,000. He maintains they then decided to reduce the price they were advertising at privately, to \$429,000; he says the complainant then instructed him to reduce the price he had advertised the property for by \$10,000 so the new listing price became \$449,000 which was \$20,000 above the complainant's privately advertised price. [REDACTED] stated the complainant also requested him to advertise the address of the property.

3.12 [REDACTED] maintained that he did not believe the complainant and his wife were being fair to him, expecting him to carry all marketing costs and advertise the address so prospective buyers could drive by the property and then make inquiries privately.

- 3.13 [REDACTED] stated that when the complainant called to advise that he and his wife did not want an open home the following weekend, he removed the signs accordingly.
- 3.14 [REDACTED] says he is upset the complainant raised concerns about his conduct with other real estate salespeople without first giving him the opportunity to comment. Email correspondence between the complainant and agents from another branch of [REDACTED] in Auckland, dated 6 December 2009 was referred to.
- 3.15 [REDACTED] stated that at no time did the complainant let him know that he was dissatisfied with the services he was providing to them. He stated the complainant's email to [REDACTED] of 7 December 2009 came "completely out of the blue".
- 3.16 [REDACTED] maintains that after learning the complainant was "not happy" he telephoned him to "clarify issues or misunderstandings" and to confirm he would release them from their listing agreement if that was what they wanted. He denied he ever stated the property was "unsaleable". [REDACTED] maintains he told them the feedback he had received was that the property was on a main road and was noisy. He stated he commented that it had been difficult to arrange internal photographs to be taken, for the team inspection and for buyer viewings, because of the limited access. He believes the complainant and his wife "obviously took this as a criticism of their property and became very defensive".
- 3.17 [REDACTED] stated the complainant told him he had "begged" for the property. He stated he was offended by that allegation. He told the complainant it was unprofessional of them to suggest that he had begged for their listing. He stated he then told them they could withdraw the listing and he would cease marketing the property. [REDACTED] says he then withdrew the property details from the internet sites.
- 3.18 In her letter [REDACTED] stated that all properties listed on an exclusive agency, or joint agency agreement with [REDACTED] including any properties listed with the vendor having the right to sell privately receive a letter from her as Manager. This

letter, she stated is generated when the listing is entered into the system which is generally within 24-48 hours of the agreement being signed by the vendor. The purpose of the letter is to thank the vendor for the listing, explain the various marketing activities underway, mention the importance of early market reaction and concludes with an invitation to talk with [REDACTED] at any time about any matter relating to the marketing or sale of their property. [REDACTED] contact details are provided. [REDACTED] confirmed a letter of this nature was sent to the complainant on 15 November 2009 (two days after the listing agreement was signed). The letter, dated 16 November 2009 was before the Committee.

3.19 [REDACTED] stated it is [REDACTED] policy not to publish details of a property until the photography has been completed. This, she stated, is to ensure the property is well presented when it is first advertised for sale. She stated that because of the difficulty accessing the complainant's property to take interior photographs the listing was not made "live" for some days after the listing agreement was signed, but [REDACTED] had indicated the vendors had told him they were not in a hurry so she was not overly concerned about this.

3.20 [REDACTED] stated the complainant's property was discussed at team meetings on 17 November 2009 and [REDACTED] informed the team that viewing was "by appointment" because of the dog on the property and he said he did not have a key. She stated a team viewing was booked for 24 November 2009 but because the dog was running free when the team arrived at the property that day this had to be cancelled. The team viewed the property from the roadside instead. The team viewed the property again on 1 December 2009 as access had been arranged to enable the interior of the property to be viewed.

3.21 [REDACTED] confirmed that on 7 December 2009 she received an email from the complainant and his wife requesting that the listing agreement be cancelled immediately. They expressed concerns about the service they had received from [REDACTED]. When [REDACTED] contacted the complainant and his wife the following day they stated they were unhappy with a phone call they had received from [REDACTED]

██████████ the previous evening. ██████████ expressed her sorrow that the complainant had not contacted her to advise of his concerns with ██████████, and she sought an opportunity to remedy the situation. The complainant and his wife ultimately declined ██████████ invitation to resolve the issues which had arisen.

3.22 ██████████ stated that she agreed to release the complainant and his wife unconditionally from the listing agreement when they requested this. It appears to the Committee that this agreement was never confirmed in writing.

3.23 ██████████ believes there was a “misunderstanding about open homes” and also “miscommunication about the vendors’ motivation” in the sense that initially they told ██████████ they were not in a hurry to sell and to do “whatever is free advertising”. ██████████ stated that because of the vendors’ right to sell privately and the fact they were advertising privately for a lower price, the property would not be given the same level of priority as the company’s exclusive listings as that did not make “good business sense”. ██████████ stated she accepted this could have been more fully discussed with the complainant and his wife to ensure they clearly understood what they could expect to receive from ██████████. She stated that she has discussed the importance of good communication individually with ██████████ and with her entire sales team at her recent team meeting.

3.24 Having received ██████████ written response to the complaint and the supporting letter of ██████████ on 10 March 2010 the Complaints Assessment Committee met to discuss the material it had obtained to date and to determine whether or not any further inquiries or action were necessary.

3.25 In summary, at the meeting the Committee considered the following written material:

- a. Complaint and supporting documentation supplied with complaint;
- b. Letter from ██████████ to the complainant and his wife dated 16 November 2009;

- c. Listing agreement;
- d. Email from [REDACTED] dated 23 November 2009 to [REDACTED] newspaper confirming the property would be advertised in the next edition;
- e. Email from [REDACTED] to [REDACTED] dated 24 November 2009;
- f. Enquiry by [REDACTED] through [REDACTED] website dated 26 November 2009 regarding amending wording of advertisement;
- g. Email from the complainant to [REDACTED] dated 7 December 2009 and [REDACTED] response of 8 December 2009;
- h. Emails between the complainant and other agents from another [REDACTED] Branch in Auckland on 7 December 2009 in which the complainant complained about the service he believes he had received from [REDACTED] and [REDACTED] in the [REDACTED] Branch;
- i. [REDACTED] in-house complaints and dispute resolution policy;
- j. RPNZ Property System – Property View for complainant’s property printed on 2 January 2010;
- k. Sample of the type of sales statistics for the property (RPNZ Property System Ownership-Vendor’s Report) which [REDACTED] stated he provided to the complainant when he signed the listing agreement on 13 November 2009;

4 **Complaints Assessment Committee Determination and Reasons**

- 4.1 Having received [REDACTED] response and [REDACTED] letter in support of [REDACTED] and having satisfied itself that it had completed its inquiry into the complaint, or that no further inquiries were necessary, on 10 March 2010 the Complaints Assessment Committee conducted a hearing with regard to the complaint (under section 89(1) of the REAA).

- 4.2 The hearing was conducted on the papers pursuant to section 90 of the REAA. Pursuant to section 90(2) the Committee made its determination on the basis of the written material before it as described above.
- 4.3 The Committee determined to take no further action with regard to the complaint or any issue involved in the complaint, under section 89(2)(c) of the REAA.
- 4.4 In the Committee's view it is clear the Licensee found himself in a difficult position by virtue of having signed a listing agreement with the complainant and his wife which reserved them the right to sell the property privately. It is also clear to the Committee, from the nature of the allegations against the Licensee that the complainant and his wife were expecting [REDACTED] to provide them with the same level of service and protection they could reasonably expect to receive if they had a full sole agency agreement with [REDACTED] (which they did not have). The Complaints Assessment Committee regards many of the complainant's allegations against [REDACTED] to be unreasonable, in those circumstances.
- 4.5 On the basis of the information provided by [REDACTED] and [REDACTED], the Committee's view is that [REDACTED] took reasonable steps to market the property during the three and a half week period from the time he secured the listing agreement to 7 December 2009 when the complainant sought to be released from the agreement; and particularly given that the complainant and his wife had reserved the right to sell their property privately and there were obvious access issues. In the Committee's view the complainant and his wife could not reasonably expect to receive the same level of service as could a vendor who had signed for the benefit of full sole agency protection.
- 4.6 It is clear to the Committee that communication between the Licensee and the complainant could have been better on occasions once the listing agreement had been signed. [REDACTED] acknowledged this to an extent. The Committee regarded [REDACTED] response to these aspects of the complaint to be compelling, and to an extent they were corroborated by [REDACTED]

- 4.7 In the circumstances the Committee does not regard the communication issues as significant to the extent they fall within any of the four limbs of the definition of unsatisfactory conduct contained in section 72 of the REAA.
- 4.8 For these reasons the Committee has determined under section 89(2)(c) of the REAA that it take no further action with regard to the complaint or any issue involved in the complaint.
- 4.9 The Committee notes that it appears no written confirmation of the cancellation of the listing agreement has been provided to the complainant and his wife. The Committee makes no finding against the Licensee in respect of that issue. However the Committee's view is that written confirmation should have been provided to formally put an end to the agreement. The agreement itself required cancellation to be by notice in writing (Clause 1).
- 4.10 It is noted that when the Committee gives the complainant written notice of this decision a copy of the Licensee's response to his complaint will also be provided to him.

5 **Publication**

- 5.1 One of the functions of the Complaints Assessment Committee is to publish its decisions (section 78(h)).
- 5.2 Publication gives effect to the purpose of the REAA as set out in section 3 ensuring transparency in the disciplinary process, and is regarded as necessary for standard setting. It is also in the public interest that the Committee's decisions be published.
- 5.3 The Committee hereby authorises the Real Estate Agents Authority to publish this decision by whichever means it considers appropriate on the condition that the names and any details which could lead to the identification of the complainant and his wife (including details of the address of the property concerned) and the

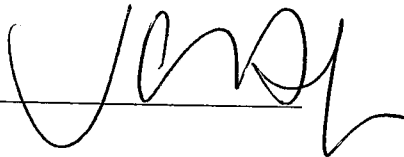
Licensee are suppressed from publication. Publication should not occur until the Authority is satisfied the Licensee has been notified of this decision.

6 Right of Appeal

- 6.1 A person affected by a determination of a Committee may appeal to the Disciplinary Tribunal against a determination of the Committee within 20 working days of the date of this notice.
- 6.2 Appeal is by way of written notice to the Tribunal. You should include a copy of this Notice with your Appeal.
- 6.3 Further information on lodging an appeal is available by referring to the Guide to Lodging an Appeal at www.justice.govt.nz/tribunals.

DATED this 1st day of April 2010

Jo Hughson
Chairperson

A handwritten signature in black ink, appearing to read 'Jo Hughson', written over a horizontal line.