

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

And

In the Matter of **Complaint No CA2379198**

In the Matter of **Ms A against Ms T**

Determination of Complaints Assessment Committee

Dated this 24th day of June 2010

Complaints Assessment Committee:

CAC No: 10019

Chairperson: Sandra Gill

Deputy Chairperson: Peter McDermott

Panel Member: Kay McKelvie

Determination of Complaints Assessment Committee

1 Complaint

- 1.1 The Licensee, Ms T, currently holds a salespersons licence and works for ABC Realty Limited – XYZ Hamilton.
- 1.2 The alleged unprofessional conduct occurred during a period from 12 December 2009 through to 22 December 2009.
- 1.3 The complaint was received by the Real Estate Agents Authority on 05th January 2010.

2 Background

- 2.1 Ms A states that she and Mr D, Ms A's son in law, felt pressured by Ms T and allowed no input nor consultation in the sale of the property and that Ms T did not act in their best interests.
- 2.2 Ms A goes on to state that the commission of \$10,000 (ten thousand dollars) was too high, and that Ms T had misdated the contract.
- 2.3 Ms A states she has lived in the property for 17 years and that when her husband passed in 2008, she was left with the house and mortgage.
- 2.4 Ms A subsequently transferred the title to Mr D, her daughter's then partner, leaving a Caveat on the property which Ms A states was for \$90,000 (ninety thousand dollars) owing to her.
- 2.5 The property was the subject of a mortgagee sale due to the fact that Mr D had defaulted on payments to "the finance company".
- 2.6 Ms A states that Mr R of "the finance company" spoke to Mr D and informed him that he was sending Ms T around to list the property due to the default on the mortgage.

- 2.7 Mr D signed an Agency Agreement with Ms T on 12th December 2009.
- 2.8 Ms T came to the house on 18th December 2009 with an offer of \$170,000 and included a condition that the title be clear.
- 2.9 Mr D accepted and signed the offer.
- 2.10 Ms A states that during that meeting, Ms T told them that the property had illegal works done on it and that the extensions had not had Council consent which devalued the property.
- 2.11 Ms A goes on to state that she herself later checked with the Council and found that all work had in fact had received consent from the Council and was legal.
- 2.12 Ms A states that on 08th January 2010, the family found their own buyer, a Mr H, who agreed to pay \$175,000 (one hundred and seventy five dollars) and allow the family to continue renting the house for 6 (six) months following completion of the purchase.
- 2.13 On 14th January 2010, Ms A and Mr D along with Mr H took the signed agreement and deposited a cheque with Ms A's lawyers' office.
- 2.14 Ms A states that on 15th January 2010, Ms M (*"the office girl at the lawyer's"*) phoned Ms A and told her that the first buyers had offered another \$20,000 (twenty thousand dollars) but Ms A answered that *"no amount of money they offer will make me change my mind after Ms T lied and misled us"*.
- 2.15 Ms A states that she was then informed later that day that the first offer had gone unconditional and the contract with the initial buyer must be honoured.
- 2.16 Ms A states that Ms M then went on to deny that there had ever been any offer of a further \$20,000 (twenty thousand dollars).
- 2.17 In the end the house was not sold to either of the buyers.

2.18 Mr P, in an e-mail dated 08th April 2010, states that the initial purchaser's, Mr and Mrs W, were paid a cash sum of money by his mother, Ms P, on behalf of Mr D for any "*supposed costs and inconvenience*" after they threatened Mr D with court action and bankruptcy following the cancellation of the sale agreement.

2.19 Ms A's complaint was supported by a time line she had written outlining events and e-mails from Mr P.

3 Licensee Response

3.1 Ms T replied in a letter's dated 26th March 2010 and 17th May 2010.

3.2 Ms T states that she was initially instructed by "the finance company" sometime in October 2010 as Mr D was defaulting on mortgage payments. But that when Mr D obtained a job, "the finance company" withdrew the instructions.

3.3 Ms T states that her next contact with "the finance company" was in November 2010 when she was told that Mr D would be contacting her to list his property as he was again struggling to meet payments.

3.4 Mr D contacted Ms T and arrangements were made for a meeting on 12th December 2009 to discuss marketing his home and the signing of an exclusive agency agreement. Present at this meeting were Mr D, Ms A and Ms A's daughter.

3.5 On 18th December 2009, Ms T states that she prepared an offer from a Mr and Mrs W, then phoned Mr D and asked when she could meet with him to discuss the offer. A meeting was arranged for 20th December 2009. This meeting was later cancelled and a new date of 21st December 2009 was agreed.

3.6 On 21st December 2009, Mr D agreed to the price and conditions offered and signed the agreement. Ms A was present at this meeting.

- 3.7 Ms T states that on 22nd February 2010 she was informed by Mr and Mrs W solicitors that the purchaser was serving a settlement notice on the vendor, and then on 02nd March 2010, they informed her that the agreement had been cancelled.
- 3.8 Ms T states that she was later contacted by Mrs W to tell her that the Vendor had made a payment of \$1,000 (one thousand dollars) to her (Mrs W) to cancel the agreement and cover costs.
- 3.9 Ms T states that clause 19.0 in the Sale Agreement noted the caveat lodged by Ms A. The sale did not go ahead as the purchaser's could not get clear title on the proposed settlement date of 18th February 2010.
- 3.10 Ms T goes on to say that commission on the sale of the property if the sale had been successful would have been \$8,100 inc GST (eight thousand one hundred dollars). No commission was paid due to the sale being cancelled.
- 3.11 Ms T acknowledges that there was an incorrect date on the expiry date of the contract agreement. She states that the year should have been 2010 not 2009 but that this was a genuine mistake.
- 3.12 Ms T states that there was never an offer of \$190,000 (one hundred and ninety thousand dollars) made by Mr and Mrs W and provides a letter from Mrs W confirming this.

4 Information and Material Considered

- 4.1 The Real Estate Agents Authority (“the Authority”) received Ms A’s complaint against Ms T on 05th January 2010 and referred the complaint to the Complaints Assessment Committee. Pursuant to section 79(1) of the Real Estate Agents Act 2008 (the REAA), on 11th March 2010 the Committee considered the complaint and determined to inquire into it.
- 4.2 The Committee invited Ms T to provide a written response to the complaint. Written response’s dated 26th March 2010 and 17th May 2010 were received by the Authority. Ms T’s response was supported by copies of the Agency Agreement, copies of

correspondence from the vendor's and purchaser's solicitors, and letters from Mr and Mrs W.

4.3 The Committee further considered the complaint on 22nd April 2010 and determined that Ms T's response be sent to Ms A for comment. Ms A was requested to respond within 10 (ten) days of receipt of the letter if she wished to provide any further comment.

4.4 Having considered all the written information and supporting documentation provided by both Ms A and Ms T, and having satisfied itself that it had completed its inquiry into the complaint, the matter was again considered by the Committee on 26th May 2010.

4.5 The hearing was conducted on the papers pursuant to section 90 of the REEA. Pursuant to section 90(2) the Committee made its determination on the basis of the written material before it.

5 Complaints Assessment Committee Determination and Reasons

5.1 The Complaints Assessment Committee has determined under section 89(2)(c) of the REEA that it will take no further action with regard to the complaint or any issue involved in the complaint.

5.2 It is clear from the information received by the Committee that Ms T was contacted by "the finance company" and received instructions regarding the sale of the property due to Mr D's difficulty in making payments on the mortgage.

5.3 Ms T then contacted Mr D and an Agency Agreement to sell the property was signed by Mr D.

5.4 It is equally clear that Ms A has a strong emotional attachment to the property which she and her late husband had owned and lived in for many years during their married life.

5.5 Unfortunately, Ms A had signed the property over to her son in law prior to the demise of the relationship between Mr D and Ms A's daughter and was no longer the owner of the property.

- 5.6 While Ms A did have a caveat on the property to ensure she was paid any money owing to her, Mr D was the registered owner of the property from 06 July 2009 when Ms A transferred ownership of the property to him.
- 5.7 Ms T was bound by law to present the offer for the property to Mr D, but it was up to Mr D as to whether he accepted the offer or not. Mr D chose to accept the offer although providing clear title was another step which Ms A needed to agree to.
- 5.8 From the information provided to the Committee by all parties, it appears that any problems that occurred were due to the actions of Mr D and Ms A was caught up in the overall scheme of things.
- 5.9 The Committee did not regard any of the aspects of conduct which was the subject of the complaint as falling short of the standard that a reasonable member of the public is entitled to expect from a reasonably competent licensee (s 72(a)).
- 5.10 The Committee did not find that any of the aspects of the complaint met the requirements of section 72(b) which refers to contraventions by a licensee of the 2008 Act or of any regulations or rules made under this Act.
- 5.11 Nor did it consider Ms T had carried out real estate agency work which was incompetent or negligent (s 72(c)) or which would reasonably be regarded by agents of good standing as being unacceptable (s 72(c)).
- 5.12 Taking into account all the circumstances described above, in the Committee's view there is no basis upon which it could make a finding of unsatisfactory conduct in respect of any aspect of conduct which were the subject of complaint.
- 5.13 For these reasons the Committee has determined under section 89(2)(c) of the REEA that it take no further action with regard to the complaint or any issue involved in the complaint.

6 Publication

6.1 One of the functions of the Complaints Assessment Committee is to publish its decisions (section 78(h)).

6.2 The Committee has determined that this decision should be published in the interests of ensuring the disciplinary process remains transparent, independent and effective. The Committee also regards publication of this decision as desirable for the purposes of standard setting and it is in the public interest that the decision be published.

6.3 The Committee hereby authorises the Authority to publish this decision by whatever means it considers appropriate provided that the names and identifying details of both the complainant (including the address of the property) and the Licensee (including the name of his employer) and any named or identified third parties are suppressed from publication.

7 Right of Appeal

7.1 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.

7.2 Appeal is by way of written notice to the Tribunal. You should include a copy of this Notice with your Appeal.

7.3 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 24th day of June 2010



Sandra Gill
Chairperson