

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

And

In the Matter of **Complaint No CA2650899**

In the Matter of **Mr and Mrs N against XYZ**

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**Determination of Complaints Assessment Committee**

Dated this 13<sup>th</sup> day of August 2010

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**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 Mr and Mrs N state that they believe the actions of Mr W of XYZ were slack and half hearted and directly or indirectly contributed to extra financial costs and unnecessary stress for them.
- 1.2 The alleged unprofessional conduct occurred during August 2008 and June 2009.
- 1.3 The complaint was received by the Real Estate Agents Authority on 27 January 2010.

### **2 Background**

- 2.1 Mr and Mrs N purchased a farm, with the contract dated 3 July 2008, becoming unconditional on 8 August 2008 and possession date being 1 June 2009. The contract also included several warranties written into the contract that were the responsibility of Mr C (the vendor).
- 2.2 The agent involved in the initial agreement was Mr B of XYZ.
- 2.3 Mr and Mrs N state that there were also some verbal warranties given by the vendor and that they were told by Mr B that these *“did not need to be written as he was a close friend of the vendor and he would make sure they were honoured”*.
- 2.4 As possession date neared, Mr and Mrs N state that they *“became concerned as none of the warranties had been completed”*.
- 2.5 Mr and Mrs N contacted the agent, Mr B, who they state shared their concerns.

- 2.6 Mr B organized a meeting with Mr M, himself and Mr and Mrs N. At this meeting, Mr and Mrs N state that Mr M assured them that the all warranties, both verbal and written, were binding.
- 2.7 Mr and Mrs N state that following the discussion with Mr M, Mr B and Mr W had a meeting with the vendor at which the vendor acknowledged all warranties, and offered some remedies for what Mr and Mrs N state was a breach of contract.
- 2.8 They state that Mr W and the vendor recorded all the verbal warranties and acknowledgements by the vendor. They state that Mr W assured them that he would keep in touch with the vendor to ensure that all warranties were fulfilled on possession date.
- 2.9 Over the weeks following that meeting, Mr W exchanged e-mails and phone calls with Mr and Mrs N and they were led to believe that all warranties would be completed by 1 June 2009.
- 2.10 Mr and Mrs N state that on 22<sup>nd</sup> April 2009, they received a letter from the vendor's solicitor denying any verbal warranties.
- 2.11 Mr and Mrs N state that they then contacted Mr W but "*unfortunately during this conversation got cut off and several attempts over the following weeks to contact [Mr W] failed*".
- 2.12 Mr and Mrs N state that "*as a result of the warranties not being honoured, they incurred over twenty five thousand dollars in legal fees as well as over ten thousand dollars to rectify unfulfilled warranties and a six week delay on possession date*".
- 2.13 Mr and Mrs N state that they believe the actions of Mr W directly or indirectly contributed to the extra financial costs for them.

- 2.14 In their final response dated 22 June 2010 to the comment provided by XYZ, Mrs N states that *“overall we feel that [XYZ] slack and half heartedness led to a lot of unnecessary stress and financial loss on our part”*.
- 2.15 Mr and Mrs N confirmed that mediation did take place and that settlement was agreed at a lower price for the property.

### **3 Licensee Response**

- 3.1 XYZ replied in a letter dated 7 April 2010 signed by both Mr W and also Mr P in his capacity as Principal of XYZ.
- 3.2 The letter provides information regarding the interactions between XYZ and Mr and Mrs N and states that Mr B handled the sale and purchase transaction in mid 2008 and that Mr W only became involved when Mr N came into the agency to complain about the seller’s performance in late 2008/early 2009.
- 3.3 The role of Mr W *“was to broker a way forward after a breakdown between the two parties ie the seller and purchaser after a request from [Mrs N] as purchaser”*.
- 3.4 The letter outlines the complex and multilayered relationship between Mr and Mrs N and the vendor.
- 3.5 At the time Mr and Mrs N purchased the farm, settlement was not to be until twelve months later. The seller stated that he would not milk cows for that year as he wished to immediately quit dairy farming. Mr N suggested that the vendor employ him as a 50% share-milker for the year leading up to settlement so milking cows would stay on the property and this was accepted. Unfortunately Mr N remained working on another farm 3.5 hours travel away. To ensure he (Mr N) could fulfill his 50% share-milking obligations, Mr N employed the vendor and his wife during the year to do the work.

- 3.6 XYZ state that this multilayered relationship meant that there were complex matters of disagreement between the partners when Mr N approached XYZ some 6 months after the sale and purchase agreement had been signed.
- 3.7 They go on to state that *“there were many issues that had arisen from the farming activities and both parties had different views of how the verbal warranties agreements had been modified or renegotiated along the way (given that the two parties had been running the farm together for the previous 6-8 months)”*.
- 3.8 XYZ state that the difficulty that they faced was that *“there had been no certain breach of the agreement during March and April as the deadline or settlement/possession date had not been reached. Further, there were obvious hostilities between the parties during March and April 2009 which made progressing any issues problematic”*.
- 3.9 XYZ feel that they expended a lot of effort in trying to get the vendor to complete the warranties, and this is shown by the number of meetings, lengthy phone calls and e-mails undertaken to get the parties to agree what work was outstanding and how it should be completed. The situation was further complicated by the fact that the parties in effect had both employed each other.
- 3.10 XYZ state that they were very clear throughout with the vendor and although threatened with legal action by the vendor, that did not stop them *“from backing up the purchaser’s claims specific to the written and verbal warranties made”*.
- 3.11 Despite a number of meetings and discussions with the parties, and XYZ working with both parties to formulate a way forward, the disagreements between the vendor and purchaser were such that neither party were prepared to agree on how and when the work required for the warranties was to be completed.
- 3.12 In May 2009, XYZ state that they *“received a letter from the vendor’s solicitor stating that the purchasers had purported to cancel the contract and that the seller would be taking legal action against [XYZ]”*.

- 3.13 XYZ state that they have since been advised that the purchaser and the vendor met with their lawyers shortly after the documented settlement date in a mediation process and agreed to a substantially lower purchase price, and that all issues of compensation were addressed in the mediation process. The details of the agreement are confidential between the parties and as such, XYZ are unable to provide any further information as to the outcome of the mediation process or any agreement reached.
- 3.14 XYZ believe that they did everything they could possibly do to get both parties to perform under the contract.

#### **4 Information and Material Considered**

- 4.1 The Real Estate Agents Authority (“the Authority”) received Mr and Mrs N’s complaint against XYZ on 27 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 11 March 2010 the Committee considered the complaint and determined to inquire into it.
- 4.2 Along with their letter of complaint, Mr and Mrs N included a copy of the Agreement for Sale and Purchase of Real Estate and correspondence with XYZ.
- 4.3 The Committee invited XYZ to provide a written response to the complaint. A written response dated 7 April 2010 was received by the Authority. XYZ’s response set out the events from their perspective and was supported by documentation from the complainant’s legal representatives, and copies of e-mails and correspondence exchanged between XYZ and the parties.
- 4.4 The Committee further considered the complaint on 22 April 2010 and determined that XYZ’s response be sent to Mr and Mrs N for comment.
- 4.5 A response from Mr and Mrs N was received at the Authority by way of an e-mail on 22 June 2010.

- 4.6 Having received the written response from XYZ, and then the final response from Mr and Mrs N, and having satisfied itself that it had completed its inquiry into the complaint, the matter was again considered by the Committee on 6 July 2010.
- 4.7 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 REAA that it will take no further action with regard to the complaint or any issue involved in the complaint.
- 5.2 From the evidence provided, it appears that the relationship between the vendor and the purchaser also became acrimonious and was only settled by action within the legal sphere.
- 5.3 It is clear from the information received by the Committee, that despite Mr and Mrs N's belief that XYZ were "*slack and halfhearted*" in their dealings during this process, the evidence shows otherwise. There is evidence to show that XYZ expended considerable energy in their attempts to resolve the ongoing issues between vendor and purchaser.
- 5.4 Despite the considerable efforts of XYZ to assist the vendor and purchaser to reach a mutually acceptable outcome, these efforts were unsuccessful. The disagreements between the vendor and the purchaser were of such magnitude that they were only settled through a process of mediation.
- 5.5 Mr W, although not the agent who handled the original sale agreement, stepped in some time later when issues arose between the vendor and purchaser and attempted to help the parties work things out.
- 5.6 The evidence given to this Committee clearly shows that any extra cost incurred by the purchaser was due to the actions of the purchaser, not XYZ.

5.7 The evidence also shows that XYZ went to considerable lengths in their attempts to ensure that the warranties in the Agreement for Sale and Purchase, along with the verbal warranties given, were fulfilled.

5.8 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](http://www.justice.govt.nz/tribunals).

Signed

A handwritten signature in blue ink, appearing to read 'Sandy Gill', with a stylized, cursive script.

**Sandy Gill**  
Chairperson  
Complaints Assessment Committee  
Real Estate Agents Authority

Date: 13 August 2010