

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

And

In the Matter of **Complaint No CA2658621 and CA2831007**

In the Matter of **Mr M and Ms L against Ms S and Ms A**

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 S holds a Salesperson's licence, and Ms A hold all three classes of licence, Salesperson, Agent, and Branch Manager. Both Licensee's work for XYZ Real Estate Limited trading as ABC.
- 1.2 The complaint is against both Ms S and Ms A and relates to the property owned by Mr M and Ms L listed with Ms S.
- 1.3 The majority of the alleged actions leading to the complaint occurred in September through to October 2009 and are covered under s172 of the Real Estate Agents Act 2008 (REAA), and the remainder are covered by the REAA.
- 1.4 The complaint was received by the Real Estate Agents Authority (the Authority) on 01st February 2010.

2 Background

- 2.1 Ms L and Mr M sent their complaint to the Authority by way of e-mail. Included with their letter of complaint, they have provided documentation of e-mails between Ms L and Mr F, a copy of the letter from Ms A cancelling their agency and a copy of the ABC Property System Listing Authority.
- 2.2 In their letter of complaint, Ms L and Mr M state that on 26th September 2009, they listed their property with Ms S. Prior to this they had listed their property privately but following a visit to an open home of Ms S's, they made the decision to list their property with her.

- 2.3 They state that Ms S told them that she was an outstanding agent with an exemplary record and guaranteed she would sell their house for them at the price they needed.
- 2.4 When they agreed to sign with Ms S, Ms L and Mr M state that she told them that their property was worth “*conservatively mid to high \$400’s – around \$470,000 - \$480,000*”. They state that once they had agreed to list with Ms S, she then persuaded them that the right course of action was to take the property to auction and assured them that “*we would get the price we were looking for at auction*”.
- 2.5 Once the property was listed, Ms S presented them with a marketing plan that would cost \$3,500 (three thousand five hundred dollars). They informed Ms S that they were unable to afford this amount and state they were told that she “*could provide us with a ABC credit card which was interest free for three months, therefore we would not have to pay for the marketing until the property sold*”.
- 2.6 Ms L and Mr M state that they agreed to this plan and signed the paperwork. They were then informed later that same week that they did not qualify for the ABC credit card but were committed so had to find some other way to pay for the auction and marketing campaign.
- 2.7 Ms L states that “*at this point we were feeling extremely pressured and so I reluctantly put the cost on my own credit card, with the assurance from Sandra that the house would be sold and deposit released to me in time for the payment due*”.
- 2.8 The house did not sell at auction.
- 2.9 A week after the auction, they state that Ms S advised them that they should put an actual price on the house. Ms L and Mr M state that they decided to advertise it at \$470,000 (four hundred and seventy thousand dollars).

- 2.10 Ms L and Mr M state that over the next few weeks, Ms S started dropping hints that they should drop the price and that a “crisis meeting” was held to which Ms S brought along Ms A.
- 2.11 They state that at this meeting, they were advised that their property was overpriced and they needed to drop the price. Ms L and Mr M asked for an explanation as to why the initial appraisal given by Ms S was so wrong regarding price.
- 2.12 Ms L and Mr M state that at this point Ms S and Ms A denied that any such appraisal had been given and stated that the market dictated the price, not the agents.
- 2.13 Ms L and Mr M state that they then challenged the refusal of the agency to both compensate them for the \$3,500 (three thousand five hundred dollars) they had spent nor to adjust the commission payable to effect a potential sale, but without any success.
- 2.14 Towards the end of this meeting, Ms L and Mr M state that when pressed to take some responsibility for the property not having sold, the agents declined to do so. When challenged further, the Agents informed Ms L and Mr M that they were not the type of clients they wished to deal with and that if mutually agreeable, they would cancel the existing contract.
- 2.15 The following week, Ms L telephoned Mr D, ABC South Island Manager, but states that *“he only paid lip service and then when I wasn’t satisfied, told me to call Mr F”*. She did telephone Mr F but felt that he also gave her the same *“lip service”* as Mr D. She states that Mr F did say he would discuss the matter with Ms S and Ms A and get back to her, but didn’t. When Ms L contacted Mr F a

couple of weeks later, he told her that he considered the matter closed and wished her good luck for the future in selling her house.

- 2.16 Ms L and Mr M state that they feel very aggrieved after a bitter experience, which left them \$3,500 (three thousand dollars) in debt, and their house unsold. They believe that in any other industry they would have been assured of either a satisfactory outcome, or their money back.

3 Licensee Response

- 3.1 Ms S replied to the Authority in a letter dated 25th March 2010, and Ms A replied in a letter dated 26th March 2010. Included with their letters were a copies of the letter cancelling the agency with Ms L and Mr M, a letter from Mr F as Principal of ABC, copies of the Residential Listing Card for Ms L and Mr M's property, Marketing Feedback Reports for the property dated 13th, 20th and 26th October 2009, advertisements for the property, a Proposal Book dated 16th June 2009 given to Ms L and Mr M, an offer made for the property in February 2010, other documentation relating to the marketing of the property, and testimonials for Ms S from former clients.
- 3.2 The Proposal Book dated 16th June 2009, which was compiled by Ms G, another agent at the agency, gives an appraisal of the property and states the range of \$425,000 - \$440,000 (four hundred and twenty five thousand dollars – four hundred and forty four thousand dollars) as the achievable range.
- 3.3 The following information is taken from the information and documentation provided by Ms S.
- 3.4 Ms S met Ms L when she came to an open home that Ms S was holding. Ms L told her that she and her partner were looking to sell their property and Ms S offered to do an appraisal, which Ms L accepted.

- 3.5 Following this meeting, Ms S met with Ms L and Mr M at their home to look over it and then returned to her office to research recent sales of similar properties in that area as comparisons. Ms S then made another appointment to meet with Ms L and Mr M.
- 3.6 Ms S also discovered that Ms L and Mr M were attempting to sell their property privately on Trade Me which they had not told her.
- 3.7 At the second meeting, they all went through the information gathered by Ms S and Ms L and Mr M informed her that they “*needed \$475,000 (four hundred and seventy five thousand dollars) and if they did not get that amount, they wouldn’t sell the property*”.
- 3.8 Ms S states that she told Ms L and Mr M that her “*appraisal indicated that value was probably more in the mid \$400’s, and the only chance of achieving that premium was to offer the property by auction*”. Following some discussion, Ms S then gave Ms L and Mr M a couple of days to think about what they wanted to do.
- 3.9 A number of days later, Ms S spoke to Ms L on the telephone for what she estimates was half an hour. During that conversation, Ms S states that Ms L told her that she thought auction was the way to go but had concerns about paying marketing money and the property then not selling. No decision was made at that time.
- 3.10 A few days later, Ms L telephoned Ms S and asked if she would reduce her commission. Ms S states that she told Ms L that she would not, and that if Ms L “*ran with*” an agent who did reduce their commission, then that “*should ring alarm bells about their negotiation skills when at the end of the day they would be negotiating with her money on a contract*”.

- 3.11 Ms L again telephoned Ms S and informed her that they would list their property with Ms S, one of the reasons being that Ms L was impressed by when Ms S would not “cave in” and reduce her fees.
- 3.12 During this conversation, Ms S states that various methods of marketing were discussed including auction.
- 3.13 Ms S states that it was only when Ms L and Mr M told her that the money for marketing was an issue did she advise them about the possible option of a ABC credit card. Ms L decided that she and Mr M would apply for the card.
- 3.14 On 30th September 2009, Ms L and Mr M’s application for the ABC credit card was declined. Ms S notified them of this and also advised them that marketing of the property could not commence until funding for it was paid. Ms L decided to pay it with her own credit card.
- 3.15 A number of open homes were held and Ms L and Mr M were given written weekly reports and had weekly face to face meetings with Ms S. Ms S states that “*Market feedback ranged from high \$300’s through to mid \$400’s*” and Ms L and Mr M were told this in the reports. Both stated that they would not sell at this price.
- 3.16 After the second open home, Ms S’s manager, Ms A accompanied her to the weekly meeting with Ms L and Mr M, and a meeting was also held with the auctioneer.
- 3.17 The property went to auction with the highest bid being \$415,000 (four hundred and fifteen thousand dollars) which Ms L and Mr M declined.

- 3.18 Ms S then advised them to move onto the next stage which was to put a price on their property and take it to the market. Ms L and Mr M decided to price the property at \$475,000 (four hundred and seventy five thousand dollars).
- 3.19 The top bidder from the auction telephoned Ms S to make an increased offer of \$425,000 (four hundred and twenty five thousand dollars) which was then presented to Ms L and Mr M and which they declined.
- 3.20 Post auction, Ms S states that she continued to market the property with all post auction costs covered by the agency but there were no further offers and feedback, which was relayed back to Ms L and Mr M, was that prospective purchasers saw the price as being too high.
- 3.21 On 06th December 2009, Ms S states that she arranged a meeting with Ms L and Mr M, her manager Ms A and herself to “*reflect, brainstorm, consider price and where to from here*”.
- 3.22 At this meeting, Ms L and Mr M voiced their frustration and stated that they couldn’t understand why Ms S had “*appraised their property at mid to high \$400’s at the beginning and hadn’t delivered this in any way shape of form*”.
- 3.23 During the meeting, Ms S states that her manager, Ms A, attempted to talk to Ms L and Mr M in an attempt to see the best way forward, but Ms A could make no headway due to continued interruptions and rudeness from Ms L and Mr M.
- 3.24 Ms L and Mr M informed Ms S and Ms A that they had an appraisal from another ABC agent which put their property in the very high \$400’s, but Ms S states she replied to Mr M that this was incorrect as she had spoken to the agent who had provided the appraisal.

- 3.25 Mr M went on to state that if he and Ms L reduced the price, then ABC should reduce their commission rate. He then went on to say that given that ABC's "*hadn't delivered in any way*", the marketing cost of \$3,500 (three thousand five hundred dollars) should be refunded.
- 3.26 Ms A, as the Branch Manager, declined both these demands.
- 3.27 The meeting became heated and Ms S states that she then suggested that Ms L and Mr M be released from their contract with ABC with written confirmation of this provided to them. Ms L and Mr M agreed to this and Ms S and Ms A left.
- 3.28 Subsequently the property has been listed with another agency and is still on the market.
- 3.29 Ms S states that she is very uncomfortable with the allegations from Ms L and Mr M. She believes that she worked diligently and consistently for them to try and achieve the result they wanted. She states that at no time did she give any guarantee regarding price.
- 3.30 Ms A provided a letter of response dated 26th March 2010.
- 3.31 She states that she is the Branch Manager of XYZ and works closely with all her salespeople so she knows each seller's circumstances, reasons for sale and their expectations.
- 3.32 Ms A states that she first met Ms L and Mr M at the second review meeting on 20th October 2009 two weeks into the marketing campaign for their property. This meeting was to discuss progress.

- 3.33 Ms A states that the next meeting she had with Ms L and Mr M was on 06th December 2009. She states that this meeting was to review the marketing progress to date and look at future strategy.
- 3.34 At this meeting, Ms L and Mr M strongly voiced their dissatisfaction with the outcome of the auction, and the fact that they had paid for the marketing that had not produced a result that they were happy with. Ms L and Mr M requested a refund of the marketing cost and their request was declined.
- 3.35 During this meeting, Ms S suggested to Ms L and Mr M that they rethink the pricing on their property and reduce the asking price. This led to a discussion where Ms L and Mr M voiced their belief that they had been told by Ms S that their property value was in the high \$400's and that they had been misled. Ms S tried to tell them that she had not stated this but Ms L and Mr M reiterated their belief.
- 3.36 Ms A states that she herself then attempted to explain that while a vendor might wish to get a certain price, this was not always possible and was dependant on the market at that time. She goes on to say that both Ms L and Mr M were rude to her also, although Mr M apologised when asked to by Ms S.
- 3.37 Ms A states that during the meeting, it became apparent that Ms L and Mr M were unable to accept the market feedback and the relationship between Ms L and Mr M and Ms S had deteriorated so an offer, which was accepted, was made to cancel the agency agreement.
- 3.38 Ms A believes that Ms S worked diligently for Ms L and Mr M in trying to sell their property despite the fact that it did not sell, providing them with detailed feedback, continued marketing and running open homes.
- 3.39 Ms A states that both she and Ms S acted professionally and ethically at all times.

- 3.40 Mr F also provided a response as Principal of ABC Real Estate Group in a letter dated 26th March 2010.
- 3.41 In his response he outlines his involvement with Ms L.
- 3.42 Mr F is clear that he did not pay “*lip service*” to Ms L when she called to discuss the matter with him. He states that the telephone conversation was in excess of half hour duration and at the end of the conversation he thought that they had “*agreed to disagree*” and leave it at that. He states that the e-mail sent by him to Ms L (copy sent by Ms L with her letter of complaint) on 17th December 2009 outlines the misunderstanding between himself and Ms L.
- 3.43 Mr F states that during this telephone conversation, Ms L went to great pains to point out “*what a savvy business woman she was and how her husband was involved in contractual situations all the time*”.
- 3.44 Mr F would also like it noted that Ms L informed him on several occasions that she and Mr M had a market appraisal carried out by another ABC agent, Ms G for \$480,000 (four hundred and eighty thousand dollars) and this was totally incorrect.
- 3.45 Mr F also states that he discussed the behaviour of Mr M swearing and yelling at Ms A and Ms S and that Ms L admitted that she had been embarrassed and apologised to him.

4 Information and Material Considered

- 4.1 The Real Estate Agents Authority (“the Authority”) received Ms L and Mr M’s complaint against Ms S and Ms A on 01st February 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 Included with their letter of complaint, they provided documentation of e-mails between Ms L and Mr F, a copy of the letter from Ms A cancelling their agency and a copy of the Harcourt Property System Listing Authority.
- 4.3 The Committee invited Ms S and Ms A to provide a written response to the complaint. Ms S replied to the Authority in a letter dated 25th March 2010, and Ms A replied in a letter dated 26th March 2010.
- 4.4 Included with their letters were copies of the letter cancelling the agency with Ms L and Mr M, a letter from Mr F as Principal of ABC, copies of the Residential Listing Card for Ms L and Mr M's property, Marketing Feedback Reports for the property dated 13th, 20th and 26th October 2009, advertisements for the property, a Proposal Book compiled by Ms G dated 16th June 2009 given to Ms L and Mr M, an offer made for the property in February 2010 and testimonials for Ms S from former clients.
- 4.5 The Committee further considered the complaint on 22nd April 2010 and determined that Ms S's and Ms A's response be sent to Ms L and Mr M for comment. Ms L and Mr M were requested to respond within 10 (ten) days of receipt of the letter if they wished to provide any further comment.
- 4.6 Having considered all the written information and supporting documentation provided by both Ms L and Mr M and Ms S and Ms A, 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.

4.7 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 REEA that it will take no further action with regard to the complaint or any issue involved in the complaint.

5.2 From the information received by the Committee, it is apparent that Ms L and Mr M made the decision first to list the property with Ms S, and then to take the property to auction. While Ms S provided advice, any final decision as to what happened remained with Ms L and Mr M, including whether or not to pay any marketing fee.

5.3 A copy of an appraisal undertaken by ABC dated 16th June 2009 given to Ms L and Mr M clearly stated that if the property was submitted for sale, the expected price would be in the range of \$425,000 (four hundred and twenty five thousand dollars) to \$440,000 (four hundred and forty four thousand dollars) in the market at that time, but Ms L and Mr M wanted to achieve \$475,000 (four hundred and seventy five thousand dollars).

5.4 Ms L and Mr M listed their property with Ms S on 05th October 2009 after attempting to sell their home privately. A decision was made to take the property to auction, but it did not sell as the only offer was below what Ms L and Mr M were prepared to accept.

5.5 Following the failure to sell at auction, Ms S continued to market the property but could not achieve the price required by Ms L and Mr M.

- 5.6 When Ms S, along with her Branch Manager Ms A attempted to advise Ms L and Mr M that the price they wanted to get for the property was too high, Ms L and Mr M did not agree and felt that they had been misled by Ms S.
- 5.7 Despite the fact that Ms L and Mr M believe that they were misled by Ms S, the comprehensive written reports provided by Ms S following each open home clearly state that prospective buyers at the open homes priced the property at between \$380,000 (three hundred and eighty thousand dollars) to \$450,000 (four hundred and fifty thousand dollars) and this was consistent at all the open homes.
- 5.8 These same reports consistently advise Ms L and Mr M that the price feedback was less than they required, and that there was a need to consider this factor when considering any offers that might be put forward.
- 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 S and Ms A 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

A handwritten signature in blue ink, appearing to read 'Sandra Gill', is written over a light blue rectangular background.

Sandra Gill
Chairperson