

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

And

In the Matter of **Complaint No.CA2680059**

In the Matter of **Ms S**
Licence No.XXXXXXXXXX

DETERMINATION OF COMPLAINTS ASSESSMENT COMMITTEE

Dated : 14 June 2010

Complaints Assessment Committee:

CAC10029

Chairperson	David Barker
Deputy Chairperson	Joan Harnett-Kindley
Panel Member	Paul Morten

DETERMINATION OF COMPLAINTS ASSESSMENT COMMITTEE

1. Licensee Background

1.1 The licensee, Ms S, is an agent working for XYZ Real Estate Ltd in Rotorua.

2. Complaint

2.1 A complaint was lodged by Ms F on 2 February 2010 and relates to the marketing of a property at 89 Pandora Avenue, Rotorua.

2.2 The complainant alleges a number of errors in the marketing of the property which occurred during December 2009 and January 2010.

2.3 The first error occurred on 9 December 2009 when the property was incorrectly listed on the company's website for BEO \$229,000 when in fact it should have been BEO \$239,000.

2.4 The second error occurred on 17 December 2009 after the complainant had sent an email to the licensee saying that she would consider reducing the house price. She checked the website of the company the following day and found that the price had been reduced to \$235,000 despite the fact that the complainant had said that she was only considering this move.

2.5 At about this time the complainant checked the real estate website and found that the property was listed as NEG \$239,000 rather than BEO \$239,000.

2.6 The fourth error occurred on 28 January 2010. After a meeting between the complainant and the licensee, agreement had been reached to reduce the price to \$235,000. On checking the company's website after the meeting the complainant found the property was listed at just \$235.

2.7 The final error occurred on 31 January 2010 and related to an open home arranged for that day. The complainant had spent considerable time the previous day cleaning the house and preparing it for the open home and made sure that she was not at home on 31 January at the scheduled time for the open home. When she returned home she found that the open home had not in fact gone ahead due to confusion at the company's office which had mistakenly noted that the open home was to be cancelled.

3. Licensee's Response

- 3.1 The licensee responded on 15 April 2010.
- 3.2 The licensee has admitted that the first error took place explaining that the listing form was correct but an input error by the support department had resulted in the wrong price going on the website.
- 3.3 The licensee also accepts that the second and third errors occurred. She advises that she corrected them as soon as they were advised and she apologised to the complainant. She denies putting any pressure on the complainant to reduce the sale price of the property.
- 3.4 The licensee also acknowledges that the fourth error occurred. Once again she apologised and corrected the error. The licensee maintained that the errors were caused by the graphic design team at the company and it was an unfortunate coincidence or sequence of errors.
- 3.5 The licensee also acknowledges that no one attended the home originally scheduled for Sunday 31 January. She explains that the complainant had advised that she would terminate the agency the following week. When this information was relayed to the company prior to 31 January, the company cancelled the open home scheduled for that day in error. Once again the licensee apologised to the complainant and acknowledged the error.

4. Complaints Assessment Committee Determination and Reasons

- 4.1 Having received written responses from the licensee and having satisfied itself that it had completed its enquiry into the complaint on 19 May 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.

- 4.3 The Complaints Assessment Committee has determined under Section 89 (2) (b) of the REAA that it has been proved, on the balance of probabilities, that the licensee Ms S has engaged in unsatisfactory conduct as that term is defined in Section 72 of the REAA.
- 4.4 The Committee notes that the licensee has admitted that all of the five errors alleged by the complainant took place.
- 4.5 The Committee believes that this number of errors is unacceptable on the listing of a single property.
- 4.6 The Committee finds that the conduct breaches rule 5.1 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009; and is a breach of section 72 (b) of the Act. The Committee also finds that the conduct breaches section 72(a) and (d) of the Act.

5. Penalty

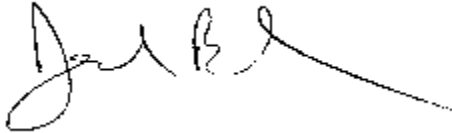
- 5.1 Having determined under Section 89 (2) (b) of the REAA that it has been proved to the required standard that Ms S has engaged in unsatisfactory conduct, the Committee has the power by virtue of Section 93 of the REAA to make an order in the nature of a penalty against Ms S.
- 5.2 Before it determines whether to make any orders available under Section 93, the Complaints Assessment Committee invites Ms S to make any submissions she may wish on the issue of penalty, and on the issue of whether the Committee's decision should be published. The complainant is also invited to make any submission she wishes in regards to penalty. Any submissions must be made to the Committee within 7 days from the date of receipt of this determination.

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.

Signed

A handwritten signature in black ink, appearing to read 'David Barker', with a long horizontal stroke extending to the right.

David Barker
Chairperson
Complaints Assessment Committee
Real Estate Agents Authority
Date: 14 June 2010