

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

(Penalty)

Dated this 2nd day of August 2010

Complaints Assessment Committee

CAC10029

Chairperson: David Barker

Deputy Chairperson: Joan Harnett-Kindley

Panel Member: Paul Morten

DETERMINATION OF COMPLAINTS ASSESSMENT COMMITTEE

(PENALTY)

1 Introduction

- 1.1 By its decision dated 14 June 2010, the Complaints Assessment Committee made a determination under Section 89(2)(b) of the Real Estate Agents Act 2008 (“the REAA”/“the Act”) that the Licensee, Ms S of Rotorua has engaged in unsatisfactory conduct as that term is defined in Section 72 of the Act.
- 1.2 Having made a determination under Section 89(2)(b) the Committee may make one or more of the orders set out in Section 93 of the Act.
- 1.3 The Committee invited Ms S and the complainant to make any comments or submissions in relation to penalty. The complainant, Ms F provided a written submission dated 17 June 2010. Ms S provided a written submission on 2 July 2010.

2. Complainants Submission

- 2.1 Ms F has asked for compensation of one third of the total advertising costs of \$450 which cover the ‘For Sale’ sign, advertisements in property magazines and the website listing. It is the one third relating to the website listing which Ms F believes should be reimbursed.
- 2.2 Ms F is also seeking compensation for the time and money spent preparing her home for the open home scheduled for 31 January 2010 but which was inadvertently cancelled by the licensee’s office.
- 2.3 Ms F also asks for reasonable compensation for the unnecessary stress she incurred during the period in which the errors in the marketing of her property were made.

3. Licensee's Response

3.1 Ms S enclosed copies of letters from the administration manager and the principal of the agency involved, XYZ Real Estate Ltd. These letters advised that the errors concerned were primarily made by the support team in the agency. Both the administration manager and the principal advised that the company has learned from this situation and implemented measures to ensure these errors will not occur in the future.

3.2 The licensee advises that she apologised to the client unreservedly when each error occurred and there was absolutely no hesitation in dealing with any of the issues raised.

4. Principles Considered

4.1 The Committee, when determining whether or not to make an order under Section 93(1), has also had regard to the functions which the imposition of a penalty usually must serve in professional disciplinary proceedings:

a) Promoting and protecting the interests of consumers and the public generally

Section 3(1) of the REAA sets out the purpose of the legislation. The principal purpose of the Act is "to promote and protect the interests of consumers in respect of transactions that relate to real estate and to promote public confidence in the performance of real estate agency work". One of the ways in which the Act states it achieves this purpose is by providing accountability through an independent, transparent and effective disciplinary process (Section 3(2)).

b) Maintenance of professional standards

This function has been recognized in professional disciplinary proceedings involving other professions (for example, in medical disciplinary proceedings: *Taylor v The General Medical Council* (1990) 2 A11 ER 263; and in disciplinary proceedings involving valuers; *Dentice v The Valuers Registration Board* [1992] 1 NZLR 720). In the Committee's view this function is also applicable in the disciplinary processes under the REAA.

c) Punishment

The Committee accepts that a penalty in a professional discipline case is primarily about the maintenance of standards and the protection of the public. However in the Committee's view there is also an element of punishment – indicated by the power the Committee has to impose a fine (Section 93(1)(g); or make an order of censure (Section 93(1)(a)). The element of punishment has been discussed in the context of other professional disciplinary proceedings (see *Patel v Dentists Disciplinary Tribunal* (High Court, Auckland, CIV 2007-404-1818 Lang J 13 August 2007).

d) Where appropriate, rehabilitation of the professional must be considered

The Committee regards its power to make an order requiring a licensee to undergo training or education as indicative of this function applying in the context of professional disciplinary processes under the REAA.

- 4.2 The Committee acknowledges that when making an order under Section 93, the order/s made must be proportionate to the offending and to the range of available orders.

5. Complaints Assessment Committee Determination Under Section 93

- 5.1 Having regard to the facts of this case as summarized in the Committee's determination dated 14 June 2010, the established unsatisfactory conduct and the above principles, the Committee has decided to make an order under Section 93(1)(e) requiring the licensee to refund the full advertising fee paid by the complainant of \$450 including GST.

At page 6 of her letter of complaint to the Real Estate Agents Authority dated 3 February 2010, the complainant refers to a reimbursement of \$125 of her "unused advertising budget". For the purposes of clarity, this order is for the refund of any unreimbursed balance of the advertising fee she has paid.

This payment is to be made within 21 days of receipt of this determination.

- 5.2 The Committee notes that the Agency needs to take some responsibility in this case for allowing the errors to occur.

5.3 The Committee is pleased to note that the Agency has implemented new measures to try and eliminate such errors in the future.

5.4 The Committee does not consider that it is necessary to make any of the other orders specified in Section 93(1).

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 regards the publication functions as one of the means to educate and raise industry standards by making public the nature of conduct which the Committee considers to be unsatisfactory and the consequences for licensees engaging in such conduct. Publication also gives effect to the purpose of the Act set out in Section 3 by ensuring transparency in the disciplinary process.

6.3 The Committee considers that to ensure the principal purpose of the Act is achieved, its decision dated 14 June 2010 and this decision should be published. Publication is regarded as necessary for the purposes of standard setting in this case and it is also in the public interest that the decisions be published.

6.4 The Committee requests that the identity of the complainant and the licensee be redacted from the documents to be published.

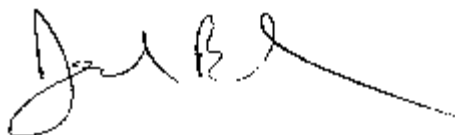
6.5 The Committee authorizes the Real Estate Authority to publish these decisions in the appropriate section of the Authority website. Any such publication should not occur until the Authority is satisfied that the licensee has been notified of this decision as to penalty and that rights of appeal have not been exercised.

7. Right of Appeal

7.1 As stated in the Committee's earlier decision, 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.



David Barker
Chairperson
Complaints Assessment Committee
Real Estate Agents Authority

Date: 2nd August 2010