

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

And

In the Matter of **Complaint No: CA3585828**

In the Matter of **Mr C**
License Number: XXXXXXXX

Decision of Complaints Assessment Committee

Dated this 4th day of August 2010

Complaints Assessment Committee:

CAC10050

Chairperson: Robyn Wilson

Deputy Chairperson: Rob Crozier

Panel Member: Peter McDermott

Complaints Assessment Committee - Decision to take no further action

The Complaint

Ms R has complained about Mr C's conduct at an auction in which she bid. She says he interfered in her bidding by telling her what to do when she did not want his assistance and that she raised her bids at least twice when she was the only bidder at his insistence.

Material Facts

Mr C is a licensee with XYZ Realty Ltd who had the sole agency to sell the property at "the property". Ms R purchased the property at an auction on 14 April 2010.

Ms R says that Mr C said to her prior to the auction that he would help her at the auction. She says she ignored his offer having prepared her plan of action. She says that when the bidding stalled, he told her to bid \$480,000 which annoyed her. She says she asked him to stop. She says she then bid \$500,000 but is not sure whether Mr C prompted that bid or not. There was a conversation between the auctioneer and Mr C after which she says he then told her to bid \$520,000. She says she was feeling very nervous and did what she was told. This bid won the auction. She says there was no-one bidding against her and she implies that Mr C's actions in getting her to bid when she already had the highest bid led her to pay more than she intended, being \$512,000, and too much for the property.

Mr C agrees with some of the complainant's account. He says that she asked about a pre-auction offer of \$525,000 but decided against it and went to the auction. He says he talked to Ms R when she arrived to make sure she knew the auction conditions and process and to ask any questions she had. He says he told her that the vendor would be on the phone with the Sales Manager during the auction and that there were bids on behalf of the vendor during the process. Mr C says he asked her whether she was intending to bid and moved away when she indicated she did not want his assistance. He says the bid of \$500,000 was made by her without his prompting. He says the auctioneer sought instructions from the vendor when the auction stalled at Ms R's bid of \$500,000. He says the vendor indicated that she would not accept \$500,000 so he approached Ms R, as the highest bidder, explaining that the owner was seeking more and could she bid \$520,000. He says he asked again and that she did so after a few moments. He says she seemed very happy and did not indicate unhappiness with his actions until some time later.

Relevant Provisions

Professional Conduct and Client Care Rules

Standards of professional conduct

6.1 An agent must comply with the fiduciary obligations to his or her client arising as an agent.

6.2 A licensee must act in good faith and deal fairly with all parties engaged in a transaction.

Client care and dealings with customers

- *General*

9.1 A licensee must act in the best interests of a client and act in accordance with the client's instructions unless to do so would be contrary to law.

9.2 A licensee must not engage in any conduct that would put a client, prospective client or customer under undue or unfair pressure.

72 Unsatisfactory conduct

- For the purposes of this Act, a licensee is guilty of unsatisfactory conduct if the licensee carries out real estate agency work that—
 - (a) falls short of the standard that a reasonable member of the public is entitled to expect from a reasonably competent licensee; or
 - (b) contravenes a provision of this Act or of any regulations or rules made under this Act; or
 - (c) is incompetent or negligent; or
 - (d) would reasonably be regarded by agents of good standing as being unacceptable

Discussion

The CAC views the complaint as being about the pressure Ms R feels she was put under by Mr C at the auction and more generally about the appropriateness and fairness of his conduct at the auction.

The main difference in their accounts is about whether he provided an explanation about why he suggested the bid of \$520,000. Ms R says he just told her to do it and he says he explained that she was the highest bidder but that the vendor would not sell at that price.

The CAC has accepted Mr C's account that the vendor would not sell at \$500,000. If we did not accept this we may have viewed the encouraging of another bid from Ms R, given she was leading the bidding, as being unfair. The CAC is not in a position to judge which party's account is the more accurate but has decided that even without an explanation being given that Mr C's actions did not put her under undue pressure or was unfair treatment. Mr C's primary duty is to his client and to sell the property. Encouraging a bid that his vendor client will find acceptable is part of his role as the selling agent. The fact that customers will feel under pressure at an auction, or in other selling environments, from the seller's agent is not in itself unacceptable. It is only when this pressure is applied unfairly or is undue that an agent steps outside what is acceptable. The CAC also has taken note of the fact that Ms R had a friend with her at the auction which would usually ameliorate the effect of any unwanted pressure.

Decision

The CAC has determined pursuant to section 89 (2) (c) that no further action be taken with regards to the complaint.

Publication

The Committee directs that this decision is to be published with the identity of the parties removed.

Right of Appeal

A person affected by a determination of a Complaints Assessment Committee may appeal to the Disciplinary Tribunal against a determination of the Complaints Assessment Committee within 20 working days after the date of this notice.

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

Further information on lodging an appeal is available by referring to the **Guide to Lodging an Appeal** at www.justice.govt.nz/tribunals.

Signed



Robyn Wilson
Chairperson
Complaints Assessment Committee
Real Estate Agents Authority

Date: 4 August 2010