

Ref: CA2328627
CAC: CAC10023

NOTICE OF DECISION

15 April 2010

Ms S
Address
Address
Address

Dear Ms S

YOUR COMPLAINT AGAINST LICENSEE MR J

The Complaints Assessment Committee met today to consider your complaint against Licensee Mr J.

The CAC has, in its discretion, decided to take no further action on your complaint pursuant to section 80(2) of the Real Estate Agents Act 2008. It appears to the Committee that, having regard to all the circumstances of the case, any further action is inappropriate or unnecessary.

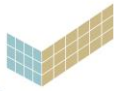
Reasons for Decision

On the information you have provided in your letter of complaint and supporting documentation, which as you know has now been responded to by Mr J, and on the other information the CAC has obtained during the course of its investigation it is clear that your complaint relates to the property management services provided to you by Mr J when he was employed by XYZ.

Property management services are not within the scope of the Real Estate Agents Act 2008. Property management services do not fall within the definition of "real estate agency work" in section 4 of the Act. This is in contrast to the previous legislation which applied to real estate agents.

Section 72 of the Real Estate Agents Act 2008 specifies the conduct that represents "unsatisfactory conduct". Unsatisfactory conduct must relate to the carrying out of real estate agency work. That means that a licensee's conduct in the course of acting as a property manager or carrying out property management work does not come within section 72.

Section 73 of the Real Estate Agents Act 2008 specifies the conduct that represents "misconduct". The position under section 73(b) is the same as under section 72. Section 73(b) is concerned with "seriously incompetent or seriously negligent real estate agency



work”, again excluding conduct in the provision of property management services. Section 73(c) is limited to wilful or reckless contraventions of the Acts, or the rules and regulations that apply to the conduct of licensees.

Paragraph (a) of section 73 is wider and in the Committee’s view it applies to conduct by licensees both in the course of carrying out real estate agency work and also in the course of carrying out other types of work, including property management work. However in the Committee’s view conduct in the course of property management work is only caught by the 2008 Act if it reaches what is called the “threshold” for misconduct (the word “disgraceful” is used in section 73(a)).

In the Committee’s view this is the position regardless of whether the conduct occurred before the 2008 Act came into force (17 November 2009). Under section 172(2) of the 2008 Act the Committee can only determine whether the licensee is guilty of unsatisfactory conduct or whether a charge should be laid in the Tribunal alleging misconduct.

Even taking the view most favourable to you, the Complaints Assessment Committee has decided there are no reasonable grounds for concluding the conduct you have complained about reaches the threshold for misconduct (section 73(a)) and therefore this is not a case where a charge should be laid before the Disciplinary Tribunal.

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 from 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 and Appeal at www.justice.govt.nz/tribunals.

Yours faithfully

Jo Hughson
Chairperson
Complaints Assessment Committee