

Complaints Assessment Committee - Decision to take no further action

The Complaint

This is a complaint by Mrs O against Mr F. Mr F is a licensee under the Real Estate Agents Act 2008 (the Act). Mr F holds a salespersons license and is the manager of XYZ Real Estate Limited.

Mrs O listed her house for sale with XYZ Real Estate Limited through another salesperson working from that office. Mrs O complains that Mr F intimidated her and put undue pressure on her to sign an offer on her property.

Material Facts

Mrs O resides at "the property". She listed her property to sell through the ABC branch of XYZ Real Estate operated by the company XYZ Real Estate Limited. Mrs O was happy with the service she obtained from the agent she listed her property with but she was unhappy with the contact she had with Mr F, another agent operating from the ABC office.

Mrs O says she spoke to Mr F by cell phone at his ABC office and arranged for him to meet at her home at 3pm on the day in question so that he could present her with an offer on her property. Mrs O says that he told her the buyer had spent a lot of money and time on the offer that was being made. She says that this approach made her feel very pressured and intimidated by Mr F to sign the offer even though she did not know how much the offer was for. Mrs O said further that she felt as though Mr F was in favour of the buyer rather than her and that she found his manner very arrogant and threatening. She indicated that she has since withdrawn her property from the market.

In response to the complaint by Mrs O, Mr F advises that as a senior member of staff at XYZ the listing agent for Mrs O had asked him to be available to present offers on Mrs O's property. An appointment had been made for him to do that at 3pm on the relevant day. He advises further that Mrs O called into the ABC office earlier on that same day on her way home from work asking to see the offer on her property. Mr F was informed of this when he returned to the office and he spoke to Mrs O on the phone regarding the offer on her property. He advises that she did not want to go back to the office to consider the offer if it was not a good one. He also advised that he offered to come to her place at the original time of 3pm, explaining that the offer was not being made through him but rather through a salesperson through the city office of XYZ. Mr F also indicated that he did not yet have the offer in his possession and that the approach that his company took was to provide the offer to the vendor in a sealed envelope for her to open and consider when it was available.

Mr F confirmed that he passed on information he had about the property, particularly that the proposed purchasers had spent money on an independent registered valuation and a builders report and so it was worthwhile her considering the offer. This is the time when Mrs O appears to have become upset with the manner of Mr F, particularly as he did not acknowledge how much money she had spent on marketing her property. At this point Mrs O appears to have cancelled the appointment at 3pm and ended the conversation.

Mr F has advised that he explained to the salesperson with whom Mrs O had listed the property that he thought it best that he not have any further involvement with Mrs O because she had taken offence at his remark about the potential purchasers of her property. Mr F also indicated that he was not and never had been in possession of the offer that was to be made on the property and so he had no knowledge of the details of that offer to provide to Mrs O.

Mrs O was offered the opportunity to respond to Mr F's explanation of events surrounding the proposed offer on her property and she has chosen not to respond.

Relevant Provisions

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.

Mr F was clearly carrying out real estate agency work in this case.

Rule 9.2 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009 (the Rules) provides:

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

If the CAC considers that Mr F's conduct contravened Rule 9.2 then he is guilty of unsatisfactory conduct in terms of section 72(b) of the Act.

Discussion

The CAC considered the content of the original complaint lodged by Mrs O with the REAA and the response received from the licensee in this case.

The parties agree on the following:

- there was an arrangement for Mr F to meet with Mrs O regarding an offer on her property at 3pm on the day in question.
- Mr F and Mrs O had a telephone discussion earlier on that same day where Mr F could not provide detailed information about the content of the proposed offer that he was bringing for Mrs O to consider.
- Mrs O became upset when Mr F explained the expense that the proposed purchaser had gone to before preparing the offer he was bringing without acknowledging how much Mrs O had spent on her marketing of the property.

The CAC considered the explanation provided by Mr F which has not been commented on any further by Mrs O. It considered that, given Mr F was not in possession of the proposed offer under discussion he was unable to have gone about presenting that offer any differently than on the basis that had been arranged. The CAC noted that Mr F was unable to discuss the terms of the offer with Mrs O by telephone and that this was acceptable and inevitable given that he was not in possession of the document to know its terms. It also noted that even if he had been in possession of the document it would have been most unusual for him to discuss the amount and other terms of any offer by telephone and it would have been expected that he meet with Mrs O face to face to talk through those terms.

The CAC acknowledges that Mrs O found it difficult to deal with Mr F's manner and simply by having a telephone conversation with him felt pressured to go along with the offer he would be bringing to her. Nevertheless the CAC found that the pressure Mrs O felt principally arose from Mr F attempting to arrange to see her face to face to actually present an offer that had been put together by another agent. Whilst it is clear that Mr F and Mrs O were unable to develop a rapport

that would put Mrs O at ease, she was sufficiently able to resist his attempts to meet at 3pm on the relevant day to the point where she did not meet with him at all and the offer was never presented.

The CAC found that the explanation provided by the licensee in this case was both plausible and logical and noted that Mrs O had chosen not to make any further comment in relation to it. It found that, whilst Mr F's manner may have been difficult for Mrs O to tolerate, nevertheless his conduct did not amount to undue or unfair pressure. Accordingly the CAC has decided to take no further action in this case.

Decision

The CAC finds that, in all the circumstances of the case, there has not been unsatisfactory conduct or misconduct on the part of the Licensees. Accordingly it determines pursuant to section 89(2) (c) that no further action need be taken with regard to this complaint.

Publication

The Committee directs that this decision is to be published. The complainant and licensee are not to be identified in the published decision.

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



Deirdre McNabb
Chairperson
Complaints Assessment Committee
Real Estate Agents Authority

Date: 30th July 2010