

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

And

In the Matter of **Complaint No.CA2347293**

In the Matter of **Ms A**
Licence No XXXXXXXX

DETERMINATION OF COMPLAINTS ASSESSMENT COMMITTEE

Dated : 14 May 2010

Complaints Assessment Committee:

CAC No:100016

DETERMINATION OF COMPLAINTS ASSESSMENT COMMITTEE

1. Licensee Background

1.1 The licensee, Ms A works in Auckland for XYZ Real Estate Ltd.

2. Complaint and Licensee's responses

2.1 The complaint has been lodged by Ms B and is dated 2 December 2009.

2.2 The complaint relates to the marketing and sale of a property at The Property, which was sold at auction on Wednesday 23 September 2009. The complainant raised 8 issues as follows:

- a) A conditional offer presented after commencement of the auction campaign so that the vendors were left with a conditional agreement in the way of pre-auction offer.

The licensee has responded that the conditional agreement was tabled prior to any commencement of marketing and was to be unconditional prior to the commencement of marketing. The contract did not become unconditional and the auction programme continued to a successful conclusion and sale.

- b) Placement of "sold" advertisement detailing photographs of the house without the consent of the owners 10 days after the event. The advertisement was paid for by the vendor in the New Zealand Herald deal and then subsequently used by XYZ for self promotion.

The licensee has responded that the vendor was not consulted as it was not a cost to the vendor. The vendor paid for three advertisements and on that basis the New Zealand Herald provided a free advertisement for a fourth placement. The New Zealand Herald does not deduct the cost of the fourth advertisement on a pro rata basis if it is not utilised. The licensee further points out that Clause 11 of the

listing authority signed by the vendor states that “we agree to the listing information and particulars of the sale of the property being passed to any persons for marketing purposes and statistics compiled and distributed by the Real Estate Institute of New Zealand”. The licensee points out that the auction was in a public forum and the property sold under the hammer to a full audience. It then became a matter of public record.

The licensee acknowledges on reflection that it would be good business practice to confirm an advertisement of this type with the vendor in future and has apologised to the vendor for any embarrassment caused.

- c) No register taken on open days despite formal request – subsequent theft from property and police questioning.

The licensee has responded that a register was maintained of all parties who visited the property and maintained an open home register and the only exception to this was a personal friend of the vendors. The vendor was supplied with the names of all potential purchasers who visited throughout the marketing campaign and the vendor was also in attendance at all open homes. The licensee has offered to supply details of all people who visited the property to the police but this has not been requested.

- d) Commission calculated on incorrect sale figure.

The licensee acknowledges that the commission was initially calculated incorrectly due to a clerical and software issue. A new software system had recently been loaded at the licensee's office and staff were not fully familiar with the new system. Input details on the sale of the property incorrectly listed the sale price as \$1.85m whereas the correct figure was \$1.81m. The licensee discovered the mistake immediately and sent a cheque to the vendor for the difference in the correctly calculated commission. The vendor returned the cheque to the licensee and asked them to send funds to their solicitor. The licensee acknowledges that there were some incorrect calculations relating to GST but that these faults were

rectified and that a small amount of interest was paid to the vendor to compensate for any interest that may have been missed.

The licensee advises that they have apologised to the vendor for these mistakes on many occasions. No request has been made from the client with respect to any further compensation.

- e) GST wrongly calculated on commission figure.

The licensee has responded as per d) above.

- f) Money sent twice to lawyers instead of bank account as requested costing substantial legal fees to redeposit.

The licensee has responded that the vendor's request for the balance of the deposit to be paid to their own account was sent to one of the administration staff via email. Unfortunately that person was absent from the office for three days that week due to sickness and the instructions were not received. When deposit funds were paid into the vendor's solicitor's trust account, the solicitor emailed the agent regarding a query on the calculation and instructing the agent to pay the shortfall into the solicitor's trust account. This instruction was followed.

- g) Auction documents not accurately prepared to match pre agreed Settlement Agreement so that the actual vendor and purchaser are left a day out for settlement.

The licensee has responded that the purchaser and the vendor agreed at the time of signing the sale contract to alter the settlement dated stipulated on the auction contract to 26 February 2010. Both vendor and purchaser initialled the alteration.

- h) Agent not turning up for open home and spending time selling other properties whilst on site with potential clients.

The licensee advises that either she or the co-salesperson, Ms C attended all open homes. The licensee has confirmed that at no time did she compromise the sale of Ms B's property by diverting potential purchasers to another property. She

states that not one of the potential purchasers was shown another property to purchase during the duration of the marketing campaign.

3. Complaints Assessment Committee Determination and Reasons

3.1 Having received written responses from the licensee and having satisfied itself that it had completed its enquiry into the complaint on 6 May 2010, the Complaints Assessment Committee conducted a hearing with regard to the complaint under Section 89 (1) of the REAA.

3.2 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.

3.3 The Complaints Assessment Committee has determined under Section 89 (2) (c) of the REAA that no further action be taken with regard to the complaint.

3.4 The licensee has acknowledged mistakes made in the calculation of the commission and related GST issues but the Committee notes that these were remedied by the licensee as soon as they were discovered and the Committee does not believe that these mistakes amount to unsatisfactory conduct.

3.5 The Committee is satisfied that the licensee has provided reasonable explanations for all the issues raised in the complaint.

4. Right of Appeal

4.1 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.

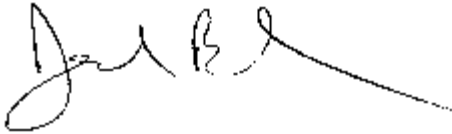
4.2 Appeal is by way of written notice to the Tribunal. You should include a copy of this Notice with your Appeal.

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

5. Publication

- 5.1 The Committee directs that this decision be published with details of the names and location of the parties to be removed.

DATED : 14 May 2010

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

DAVID BARKER