

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

And

In the Matter of **Complaint No CA2349354**

In the Matter of **Debbie Lovegrove**
Licence No 10004678

Decision of Complaints Assessment Committee

Dated this 15th day of October 2010

Complaints Assessment Committee

CAC10011

Chairperson: Deirdre McNabb

Deputy Chairperson: Denise Bovaird

Panel Member: Rob Crozier

Determination of Complaints Assessment Committee

(Penalty)

1. Background

- 1.1 On the 7th day of December 2009 the Real Estate Agents Authority (“ the Authority”) received a complaint from Mr P regarding the conduct of licensee Debbie Lovegrove. The complaint was referred to the Complaints Assessment Committee 10011 (“ the CAC”).
- 1.2 The CAC considered rule 6.3 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009 (“REAA 2009 Rules”). That rule states:

Rule 6.3 A licensee must not engage in any conduct likely to bring the industry into disrepute.

- 1.3 The CAC found that Ms Lovegrove had engaged in conduct that sought to exclude prospective property purchasers from using Mr P's company XYZ Inspections Limited ('XYZI') to complete pre-purchase building inspection reports for their properties. By her own explanation Ms Lovegrove did not state that XYZI did a bad job with the work they were doing, rather she considered them to be 'over the top' in their reports such that her vendors may have been losing sales by purchasers being scared off.
- 1.4 The CAC noted Mr P's explanation of his experience as a qualified builder in the building industry for some 20 years and his solicitor's

confirmation of his accreditation with BOINZ indicating that he was well qualified to conduct the work undertaken by XYZI. The CAC took the view that, in the absence of clear evidence that XYZI was not conducting building inspections competently, it was unacceptable that Ms Lovegrove seek to exclude XYZI as a potential provider of building inspection services on the basis that his reports may be 'over the top'. It noted that, whilst a less thorough building inspection report may make confirmation of a property sale more likely and therefore helpful to a vendor, a potential purchaser could be correspondingly disadvantaged by such an approach.

- 1.5 The CAC took the view that the parties should be free to choose the provider of services such as those provided by XYZI and should not be excluded from making a particular choice by an agent acting for the vendor in any particular case. The actions of Ms Lovegrove had the effect of firstly potentially reducing the choices available to property purchasers and secondly excluding the complainant from conducting business freely with purchasers who were contracting with her clients.
- 1.6 Whilst Ms Lovegrove would be free to recommend providers of such services if requested, by including a printed clause excluding XYZI in agreements for sale and purchase she went beyond what the CAC considered acceptable conduct by a real estate agent. The CAC concluded that she had engaged in conduct likely to bring the industry into disrepute.
- 1.7 Decision: The CAC found on a balance of probabilities that Ms Lovegrove has been guilty of unsatisfactory conduct in terms of section 72(d) of the Real Estate Agents Act 2008 (REAA 2008) in that she engaged in conduct that would reasonably be regarded by agents of good

standing as being unacceptable and was likely to bring the industry into disrepute in breach of Rule 6.3 of the REAA 2009 Rules. The parties were invited to comment on the appropriate order(s) to be imposed in light of this finding.

2. Relevant Provisions

2.1 Having made a finding of unsatisfactory conduct against Debbie Lovegrove the CAC must now decide what orders, if any, should be made under Section 93 of the REAA 2008.

2.3 Section 93 provides:

Power of Committee to make orders

(1) If a Committee makes a determination under section 89(2)(b), the Committee may do 1 or more of the following:

- (a) make an order censuring or reprimanding the licensee:
- (b) order that all or some of the terms of an agreed settlement between the licensee and the complainant are to have effect, by consent, as all or part of a final determination of the complaint:
- (c) order that the licensee apologise to the complainant:
- (d) order that the licensee undergo training or education:
- (e) order the licensee to reduce, cancel, or refund fees charged for work where that work is the subject of the complaint:
- (f) order the licensee—
 - (i) to rectify, at his or her or its own expense, any error or omission; or
 - (ii) where it is not practicable to rectify the error or omission, to take steps to provide, at his or her or its own expense, relief,

in whole or in part, from the consequences of the error or omission:

- (g) order the licensee to pay to the Authority a fine not exceeding \$10,000 in the case of an individual or \$20,000 in the case of a company:
 - (h) order the licensee, or the agent for whom the person complained about works, to make his or her business available for inspection or take advice in relation to management from persons specified in the order:
 - (i) order the licensee to pay the complainant any costs or expenses incurred in respect of the inquiry, investigation, or hearing by the Committee.
- (2) An order under this section may be made on and subject to any terms and conditions that the Committee thinks fit.

3. Discussion

3.1 The CAC considered the submissions made by each of the parties relating to the finding of unsatisfactory conduct against the licensee. They concluded that the unsatisfactory conduct of Ms Lovegrove had produced a number of consequences for Mr P. Those included damage to his reputation and the stress associated with that, potential loss of income through clients being directed not to use him and legal expenses incurred in obtaining legal advice to deal with the consequences of the conduct of Ms Lovegrove and its impact on his business.

3.2 The CAC noted the licensee's indication that she had initially used the clause at the request of a particular vendor and that after a similar request she had developed a standard clause that she offered to all vendors. She did not appear to understand that offering all vendors the

option of including such a clause in their contracts had the potential effect of putting XYZI in a negative light with those vendors, thereby damaging the company's reputation. These vendors may have had no preconceived idea about XYZI before this time. The licensee has acknowledged that she was not saying to vendors that XYZI was incompetent. This only serves to make the use of the clause even more questionable. Whilst property inspections involve a cost of several hundred dollars on each occasion it is not possible to quantify the extent of the financial impact that this conduct had on the business of XYZI. Suffice to say that XYZI is likely to have missed out on income as a consequence of the conduct of the licensee.

- 3.3 The CAC notes from the correspondence received from the licensee that she has apologised to Mr P and has since referred business to him. This has been taken into account in the decision made by the CAC regarding the appropriate orders to be made in this case.

4. Decision

- 4.1 Pursuant to section 93 of REAA 2008 the CAC orders that:
- a. the licensee be reprimanded for her unsatisfactory conduct (section 93(1)(a));
 - b. the licensee be ordered to apologise in writing to the complainant (section 93(1)(c)); a copy of the apology to be given to the Authority;
 - c. within 20 working days of this order the licensee place an advertisement in the property section of the local community newspaper circulating in 'The Gardens' area, the wording of which is to be approved by the CAC, noting that

XYZI operates a property inspection service in the area and that vendors and purchasers of properties in the area are free to use the services of XYZI for that purpose (section 93(1)(f)(ii));

- d. the complainant provide the Authority with a copy of the invoice rendered by his solicitor for the provision of legal advice regarding the conduct of the licensee (which advice culminated in the letter dated 15 September 2009 from the complainant's solicitor to the licensee) and that within 20 working days of the date of this order the licensee pay directly to the complainant the amount of this invoice being a cost incurred by him in respect of this inquiry/investigation (section 93(1)(i)).

5. Publication

- 5.1 The Committee directs that this decision is to be published.

6. Right of Appeal

- 6.1 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.
- 6.2 Appeal is by way of written notice to the Tribunal. You should include a copy of this Notice with your Appeal.

6.3 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: 15 October 2010