

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

And

In the Matter of **Complaint No CA2366454**

In the Matter of **Gary Williams**

**License Number 10016056**

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Determination of Complaints Assessment Committee

Dated this 30<sup>th</sup> day of August 2010

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**Complaints Assessment Committee**

**CAC10006**

**Chairperson: Robyn Wilson**

**Deputy Chairperson: Peter McDermott**

**Panel Member: Chris Rogers**

## **Determination of Unsatisfactory Conduct**

### **1. The Complaint**

1.1 This complaint was made by Mr T on 17 December 2009.

The complaint concerns –

- a) An alleged breach of sec 54 (2) Real Estate Agents Act 1976 (“the REAA 1976”) – in that the licensee failed have an approved person in effective control of a branch office.
- b) An alleged false declaration to the Real Estate Agents Licensing Board (“the REALB”) in that the licensee applied for the renewal of a salespersons and a branch manager’s certificate in the name of Ms D when that person was no longer an employee and in fact had left the country.
- c) An alleged breach of sec 50(2) REAA 1976 – in that the licensee failed to return to the REALB, both the sales and branch manager certificates of Ms D, immediately upon her employment ceasing with Property Market B.O.I. Limited.

### **2. Material Facts**

2.1 At the time of the alleged conduct the licensee Gary Williams was the director of Property Market B.O.I. Limited trading as L J Hooker Kerikeri and Paihia. Mr Williams was also principal officer of L J Hooker Paihia which had a branch office at 70 Keri Keri Road Keri Keri.

2.2 In December 2008 the then branch manager of the Keri Keri office resigned. Mr Williams employed Ms D as the new branch manager to commence 21<sup>st</sup> January 2009. At the end of January 2009 Ms D departed for Australia.

2.3 On the 27<sup>th</sup> January 2009 the REALB has notified Mr Williams that Ms D’s sales and branch

manager certificates were due to expire at the end of March 2009.

2.4 Mr Williams has renewed both certificates for the 2009/10 year by correspondence and payment to the REALB received 9<sup>th</sup> March 2009.

2.5 On 5<sup>th</sup> February 2009 Mr Williams applied to the REALB to transfer his principal place of business from Paihia to the Keri Keri office. Having transferred his principal place of business Mr Williams no longer needed a branch manager for Keri Keri. However he failed to appoint a branch manager for Paihia, being the new branch office. The REALB assumed Ms D was the branch manager at Paihia and noted this on their records without reference to Mr Williams and without notifying the REINZ.

2.6 In April 2009 Ms D applied for approval under the Mutual Recognition (Queensland) Act 1992 and the Trans-Tasman Mutual Recognition (Queensland) Act 2003, to hold a real estate license and sell real estate in Queensland Australia.

2.7 On 2<sup>nd</sup> September 2009 Mr Williams returned to the REALB, as required by sec 50 REAA 1976, Ms D's sales and branch manager certificates stating that her employment with Property Market B.O.I. Limited had ceased from that date.

2.8 On the 16<sup>th</sup> September 2009 Mr Williams notified the REALB that Mr C had been employed as branch manager for the Paihia office to commence 11<sup>th</sup> September 2009.

### **3. Relevant Provisions**

#### **3.1 Real Estate Agents Act 2008 ("the REAA 2008")**

##### **Section 172 Allegations about conduct before commencement of this section**

1. A Complaints Assessment Committee may consider a complaint, and the Tribunal may hear a charge, against a licensee or a former licensee in respect of conduct alleged to have occurred before the commencement of this section but only if the Committee or the Tribunal is satisfied that -
  - a. at the time of the occurrence of the conduct, the licensee or former licensee was licensed or approved under the Real Estate Agents Act 1976 and could have been complained about or charged under that Act in respect of that conduct

- b. the licensee or former licensee has not been dealt with under the Real Estate Agents Act 1976 in respect of that conduct

## **Section 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.

## **Section 73 Misconduct**

For the purposes of this Act, a licensee is guilty of misconduct if the licensee’s conduct –

- (a) would reasonably be regarded by agents of good standing, or reasonable members of the public, as disgraceful; or
- (b) constitutes seriously incompetent or seriously negligent real estate agency work; or
- (c) consists of a wilful or reckless contravention of –
  - (i) this Act; or
  - (ii) other Acts that apply to the conduct of licensees; or
  - (iii) regulations or rules made under this Act; or
- (d) constitutes an offence for which the licensee has been convicted, being an offence that reflects adversely on the licensee’s fitness to be a licensee.

### **3.2 Real Estate Agents Act 1976 (“the REAA 1976”)**

#### **Section 54 Supervision of Business**

(1) A licensee or, if the licensee is a company, an officer of the company who is eligible to hold a licence shall be in effective control of the principal place of business of a real estate agent.

(2) Every branch office of a real estate agent (as specified in the agent's licence) shall be under the effective control of a person approved by the Board, in accordance with sections 54B to 54D of this Act, as a branch manager.

(3) A licensee may at any time, by notice in writing given to the Registrar, change the address of his or her principal place of business to that of any of his or her branch offices, and shall forward a copy of any such notice to the Institute within 7 days after the notice is given to the Registrar.

(4) For the purposes of this section, the Board may, on application made in writing in that behalf by either the licensee or the Institute, determine which place of business of that licensee is his or her principal place of business.

(5) Every real estate agent commits an offence against this Act who, for any continuous period of more than 4 weeks, allows any person other than one specified in subsection (1) or (as the case may require) subsection (2) of this section to be in effective control of his or her principal place of business or any branch office.

#### **Section 54E      On transfer of branch manager, licensee to notify Registrar and Institute**

Where a licensee transfers a branch manager from one branch office to another, the licensee shall give notice in writing to the registrar of the transfer and shall forward a copy of the notice to the institute within 7 days after the notice is given to the Registrar.

## **4. Discussion**

4.1 Before considering the complaint we must establish whether it falls within the parameters of section 172 of the REAA 2008 –

- a) We are satisfied that the licensee was licensed at the time of the alleged conduct and such conduct could have been the subject of a complaint under the REAA 1976.
- b) We are satisfied that the matter had not been dealt with by the REINZ under the REAA 1976 prior to the commencement of the REAA 2008. (17<sup>th</sup> November 2009)

4.2 The licensee, Gary Williams, admits to breaching section 54(2) REAA 1976, in that he did not have a suitably qualified person in effective control of the Paihia branch office between the transfer of this principal place of business in February 2009 and the appointment of Mr C in September 2009.

4.3 However Mr Williams maintains that the failure to have a branch manager was inadvertent and an oversight he corrected when it was brought to his attention.

4.4 Mr Williams maintains that he applied for renewal of Ms D's sales and branch manager certificates based on her advice that even though she had departed for Australia it may not be a permanent shift and she may wish to return to selling real estate for L J Hooker in the near future.

4.5 Mr Williams maintains that he was unaware of the fact that Ms D was engaged in real estate practice in Queensland from May 2009 before being advised by letter from solicitors on behalf of the REINZ.

4.6 If Mr Williams believed that Ms D was still an employee who may return to his sales team then he was not obliged under sec 50 REAA 1976, to return her certificates to the REALB.

4.7 Ms D has supported Mr Williams' position in a letter dated 28<sup>th</sup> October 2009 stating that her certificates were renewed at her insistence and that she has now officially resigned her employment.

## **5. Decision**

5.1 We have found a breach of sec 54(2) REAA 1976. This is confirmed by the licensee's own admission.

5.2 There is insufficient evidence to show that the licensee purposefully misled the REALB over Ms D's employment status.

5.3 Given the licensee's position that Ms D remained an employee of L J Hooker B.O.I. Limited until the return of her certificates in September 2009, we believe there was no obligation under section 50(2) REAA 1976 to return the certificates to the REALB.

## **6. Orders**

6.1 Section 93 provides:

### **93 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.

6.2 The CAC has decided pursuant to section 93 (1) (b) to censure Mr Williams.

## **7. Publication**

7.1 The Committee directs that this decision is to be published.

## **8. Right of Appeal**

8.1 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.

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

8.3 Further information on lodging an appeal is available by referring to the **Guide to Lodging an Appeal** at [www.justice.govt.nz/tribunals](http://www.justice.govt.nz/tribunals).

Signed



**Robyn Wilson**

Chairperson

Date: 30 August 2010