

Complaints Assessment Committee

Complaints Assessment Committee Number: CAC10012

Complainant: Mr X

Licensee: **Darryn Laskey**

Chairperson: Robyn Wilson

Complaint Reference Number: CA2378532

The Complaint

Mr X has complained about Mr Laskey's responses to his emails, the initial email questioned the description of one of his listing as "outstanding in every way". Mr X says the reply was offensive.

Material Facts

Mr X wrote to Mr Laskey by email in August 2009 saying the description of a property in Glenfield Road as "*Outstanding in Every Way*", "*prestigious*" and "*commanding*" was inaccurate and demonstrated 'a limited understanding of the importance of good aesthetics' and as showing how 'incapable agents are of describing properties'. He received a reply from Mr Laskey on 12 August 2009 to which he responded on 18 August. Mr Laskey responded to the second email. These emails are the subject of the complaint. The parties also spoke on the telephone on 18 August and part of the complaint is about what Mr Laskey said on the phone.

Relevant Provisions

The conduct complained about precedes 17 November 2009, the date on which the Real Estate Agents Act 2008 (the 2008 Act) came into force so must be considered under section 172 of the 2008 Act.

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

(2) If, after investigating a complaint or hearing a charge of the kind referred to in subsection (1), the Committee or Tribunal finds the licensee or former licensee guilty of unsatisfactory conduct or of misconduct in respect of conduct that occurred before the commencement of this section, the Committee or the Tribunal may not make, in respect of that person and in respect of that conduct, any order in the nature of a penalty that could not have been made against that person at the time when the conduct occurred.

The conduct is assessed under Sections 72 and 73 of the 2008 Act but has to be a type of complaint that could be dealt with under the Real Estates Agents Act 1976 (the 1976 Act) and only orders that could be made under the 1976 Act, can be made now. Under section 70 of the 1976 Act an alleged breach of the Rules of Real Estate Institute of New Zealand could be the subject of the complaint.

The rule relevant to this complaint is:

13.1 Members should always act in accordance with good agency practices, and conduct themselves in a manner that reflects well on the Institute, its members and the real estate profession.

Mr Laskey was a licensee under the old Act and so a member subject to Rule 13.1.

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.

real estate agency work or agency work—

- (a) means any work done or services provided, in trade, on behalf of another person for the purpose of bringing about a transaction; and
- (b) includes any work done by a branch manager or salesperson under the direction of, or on behalf of an agent to enable the agent to do the work or provide the services described in paragraph (a); but
- (c) does not include—
 - (i) the provision of general advice or materials to assist owners to locate and negotiate with potential buyers; or
 - (ii) the publication of newspapers, journals, magazines, or websites that include advertisements for the sale or other disposal of any land or business; or
 - (iii) the broadcasting of television or radio programmes that include advertisements for the sale or other disposal of any land or business; or

Discussion

The CAC had to consider whether Mr Laskey was engaging in real estate work as defined in section two of the Act when responding to Mr X; section 72 only applies to conduct of licensee's whilst carrying out real estate work. The CAC considered that this may depend on whether Mr X was, when contacting Mr Laskey, a potential customer or not. The CAC decided that as Mr X was contacting Mr Laskey through the company website and was referring to the description of a property advertised for sale, that it was within the definition because he was a potential customer and responding to the communications from the public about properties for sale is an integral part of the work done towards bringing about a real estate transaction.

The CAC has found that Mr Laskey's replies to Mr X were rude, offensive and inappropriate. The CAC has taken particular notice of the fact that some of the comments amounted to personal abuse. The response was not warranted by the initial email or following comments albeit the initial email was critical of agents and their use of language to describe properties.

The offending phrases are:

Email of 12 August 2009

"Our apologies that we don't cater for the bored or socially impaired that may come across our adverts."

"[Y]our credibility is minimal" (for criticizing Mr Laskey who is Ray White's number 1 (the Shore) and 4 salesperson (in New Zealand.)

"Get a life or maybe a job but don't email me with rubbish like this."

Phone Call 11.30 am 18 August 2009

"Mr X, what's your problem. Are you on drugs or something?"

Email of 18 August 2009

"Mr X, my response is again "GET A LIFE", further more your email address has now been added to my 'junk mail list' as your emails fall into that category perfectly."

Mr Laskey's response to the complaint to the CAC says the emails from Mr X were critical insulting and certainly abusive. He also describes the correspondence as being an unprovoked attack. By implication he appears to be saying that his replies were warranted by the nature of the correspondence from Mr X.

The CAC disagrees with the view that the contents of the emails sent to him justified his response. While the first email does contain criticisms of the description of the house and of agents, referring to the description of the property as "reinforcing the public's perception of just how incapable real estate agents such as you are of accurately describing properties", it is not personally abusive. The CAC also notes that even if the email is viewed as being personally abusive to Mr Laskey, as Rule 13.1 requires a standard of conduct that reflects well on the profession, a personally abusive reply would still not be justified. The CAC notes that Mr Laskey, by the tone of his response to the complaint does not appear to take it at all seriously. The CAC also notes that while the tone of the initial correspondence from Mr X was critical, the subject matter of his complaint was not frivolous in the sense it concerns the accuracy or otherwise of the advertising, a subject which can attract civil and criminal liability under the Fair Trading Act if advertisements are found to be misleading or liable to mislead.

Decision

The CAC has found that Mr Laskey's conduct was unsatisfactory within the meaning of Section 72 in that his conduct would be reasonably regarded by agents of good standing as being unacceptable and breached Rule 13.1 of the rules of the Institute on the basis his conduct did not reflect well on the member or the real estate profession.

Orders

The Committee has decided to censure Mr Laskey for his conduct. While his conduct does amount to unsatisfactory conduct, it is at the lower end of the scale.

Publication

The Committee directs that this decision is to be published with the identities of the complainant removed.

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

Robyn Wilson

Chairperson

Complaints Assessment Committee 10012

Real Estate Agents Authority

Date: 5 July 2010