

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

And

In the Matter of **Complaint No CA2397045**

In the Matter of **Robert Wallace**
10014935

Determination of Complaints Assessment Committee

Dated this 6th day of October 2010

Complaints Assessment Committee:

CAC10014

Chairperson: David Towle

Deputy Chairperson: Anna Tierney

Panel Member: David Russell

Complaints Assessment Committee – Decision finding unsatisfactory conduct

1. The Complaint

- 1.1 Mr M has complained to the Real Estate Agents Authority (“REAA”) about the conduct of Robert Wallace, Vining Realty Group Limited (Nelson) trading as Bayleys. The complaint was received by the REAA on 14 January 2010.
- 1.2 Mr M has complained that Mr Wallace advertised his business for sale prior to Mr M signing an official contract with Bayleys and before Mr M had a chance to approve the advertisement. Mr M has also complained that Mr Wallace made unprofessional comments to the Nelson Mail newspaper damaging his chances of selling his business for a good price.

2. Material Facts

- 2.1 Mr M and his wife own the property in Nelson.
- 2.2 Bank A and Bank B hold the first and second mortgages respectively over the property. Bank A initiated the sale of the property but it was not a mortgagee sale.
- 2.3 From approximately mid November 2009 both Bank A and Bank B were in contact with both XYZ International and Bayleys concerning the sale of the property regarding marketing proposals and opportunities to show clients through the property.
- 2.4 Around 9 December 2009 Mr Wallace of Bayleys proceeded with marketing the property and placed the property on the Bayleys website. The property was also advertised in the Nelson Property Weekly and on the trademe.co.nz and realestate.co.nz websites.
- 2.5 On 22 December 2009 the Ms signed an agency agreement with XYZ International to sell the property. A marketing proposal for the property was agreed.
- 2.6 On 1 January 2010 Mr Wallace emailed a representative from the Bank A giving a marketing update on the property and attaching an agency agreement to consider and sign.
- 2.7 In early to mid January in response to the marketing of the property a reporter from

the Nelson Mail newspaper contacted Mr Wallace and asked him if it was a mortgagee sale. Mr Wallace said “It hasn’t been declared as a mortgagee sale, no not yet”.

- 2.8 The Nelson Mail ran an article in the paper dated 13 January 2010 about the sale of The property titled “Bank says ‘sell’ – (the property) agent”. The article refers to the Bayleys website which says “it had to be sold quickly because the bank “requires it.” and comments made by Robert Wallace as stated above in response to questions by the newspaper reporter.
- 2.9 Mr M rang Mr Wallace to express his concern about his comments to the Nelson Mail. Mr Wallace said to Mr M “for God’s sake get a life”.
- 2.10 The Ms received several phone calls from customers and suppliers after the article appeared concerned about their deposits and the property’s creditworthiness.
- 2.11 On 14 January 2010 Mr M emailed a complaint to Bayleys about Mr Wallace’s handling of the sale of the property including his comments to the Nelson Mail. In the email Mr M states that he intends to make an official complaint to the REAA.
- 2.12 On 15 January 2010 Mr Wallace emailed Mr H at Bank A informing him that Mr M has threatened to take Bayleys to the Real Estate Institute. In the email he states “I am not sure how he knows that we don’t have an agency agreement” and asks Mr H “If you could please back-date the agreement to early December when you indicated in an email that we should proceed with the marketing of the property that would be appreciated and it should cover us in any dispute with the Real Estate Institute”. Mr Wallace states he has attached a backdated agreement to a December 2009 date to the email.

3. Relevant Provisions

3.1 (a) Real Estate Agents Act 2008

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 that reflects adversely on the licensee's fitness to be a licensee.

3.2 **(b) Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009**

Rule 9 Client Care and dealings with customers

Advertising and marketing

9.15 Unless authorised by a client, through an agency agreement, a licensee must not offer or market any land or business, including by putting details on any website or by placing a sign on the property.

4. Discussion

4.1 Consideration of the complaint

4.2 The Complaints Assessment Committee (CAC) has considered the complaint from Mr M and the response from Mr Wallace.

4.3 The CAC acknowledges there were preparations in place to sell the property with Bank A and Bank B. However the property was not a mortgagee sale at that time

and no agency agreement was signed with Bayleys. The Ms had signed an agreement with XYZ International.

- 4.4 Mr Wallace went ahead and advertised the property on a number of websites and a Nelson property paper without an agency agreement. Further to this Mr Wallace made inappropriate comments to the Nelson Mail that contributed to an article which in the CAC's view could have affected the sale of the property.
- 4.5 In Mr Wallace's own defense he states in his response to the REAA that "Because of the positive response from the Bank A and the request to get started as soon as possible" he proceeded with the marketing under the impression that the property has been officially listed with Bayleys.
- 4.6 The fact is the property had not been officially listed with Bayleys when Mr Wallace advertised the property. In the CAC's view the rules under the Act make it clear that Bayleys needed to get appropriate authorities in place. Mr Wallace should have been rigorous in obtaining the documentation prior to marketing the property.
- 4.7 Mr Wallace then tried to cover up the fact that the appropriate authorities were not in place once he was made aware that a complaint was to be made to the REAA by asking Mr H at the Bank A to backdate the documentation. The CAC considers this behaviour to be unacceptable.
- 4.8 The CAC agrees that the actions of Mr Wallace fall below the general level of competence and care that should be expected by the Ms.

5. Decision

- 5.1 As a result of the above, the CAC has found that Mr Wallace's conduct was unsatisfactory within the meaning of Section 72 (a) and (b) of the Act in that it falls short of the standard that a reasonable member of the public is entitled to expect from a reasonably competent licensee and breached Rule 9.15 of the rules of the Real Estate Agents Act (Professional Conduct and Client Care) Rule 2009.

Accordingly the complaint is upheld.

6. Orders

6.1 The CAC has decided to censure Mr Wallace for his conduct.

7. Publication

7.1 The CAC directs that this decision is to be published in the interests of ensuring the disciplinary process remains transparent, independent and effective.

7.2 The complainant and any other named individual or firm are not to be identified in the published decision.

8. Right of Appeal

8.1 A person affected by a determination of a CAC may appeal to the Disciplinary Tribunal against a determination of the Complaints CAC within 20 working days after the date of this notice.

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

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

Signed

A handwritten signature in black ink that reads "Anna Tierney". The signature is written in a cursive, flowing style.

Anna Tierney

Deputy Chairperson

6 October 2010