

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

And

In the Matter of **Complaint No.CA2626464**

In the Matter of **Mr 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 Mr A is a licensee working with XYZ Real Estate Ltd, trading as ABC in Christchurch.

2. Complaint

2.1 The complaint was lodged by Mr B. Mr A was the agent for the vendors of a property at "the property", Christchurch Mr S and Mrs S C.

2.2 Mr B and his wife were introduced as possible buyers of the property by another agent from the XYZ team, Ms D on 6 January 2010.

2.3 The complainants allege they submitted an offer on Monday 18 January 2010 which was signed by both parties as purchasers and by the wife of the seller. They advised that Mr C, the other joint vendor, was overseas but had agreed to the contract via telephone and would sign the contract the next day if it was faxed to him.

2.4 The complainants allege that the offer was presented to Mr A at 9am on Tuesday 19 January to be faxed through to Mr C. They allege it was never sent, it was held back until Mr A showed someone else through the property at 11am on Tuesday 19 January. After 11am, the agent for the complainants was informed of an offer coming in from this new person and was informed that the purchasers will be in a multi offer situation.

2.5 The complainants feel that they have been disadvantaged and unfairly treated as in a normal multi offer process, both offers should be presented together by the agent to the vendors and then one contract chosen to pursue and negotiate.

2.6 The complainants allege that their contract was agreed upon and all signatures except for the vendor's husband were on the contract and he had verbally agreed and was waiting for the fax to sign the offer.

3. Licensees Response

3.1 The licensee responded in writing on 4 March 2010. He gave a detailed explanation of the sequence of events.

3.2 He stressed that he was the agent for the vendor and was introduced to the complainant by another member of the XYZ team.

3.3 The complainants had submitted an offer which was well below the vendor's expectations. The licensee had worked with the vendors and the agent for the complainants in trying to negotiate an outcome acceptable to both parties. This process resulted in an offer which had been signed by both purchasers but by only one of the vendors.

3.4 Late in the process of negotiation, the licensee received a request to view the property from another potential purchaser. The licensee arranged for the principal officer from the agency to meet with the complainants and their agent to advise them that the partially signed agreement was now in a multi offer situation but the complainants advised they were not prepared to get involved in a multi offer and decided to withdraw their offer.

3.5 The new potential purchaser visited the property and immediately made an offer which was higher than the complainants and which was accepted by the vendors.

3.6 The licensee stresses that he was acting at all times in the best interests of his client, the vendor and that the complainants had not wished to participate in a multi offer situation.

4. Complaints Assessment Committee Determination and Reasons

4.1 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.

4.2 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.

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

4.4 Having received the information outlined above, and having considered all of that information, it appears to the Committee that having regard to all the circumstances of the case, no further action is necessary.

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

4.6 The Committee is satisfied that the offer submitted by the complainants did not become a binding contract as it had not been signed by all parties.

4.7 The Committee believes that the licensee has acted in the best interests of his client and has not disadvantaged the complainants who had every opportunity to make their best offer and chose not to participate in the multi offer process.

5. Right of Appeal

5.1 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.

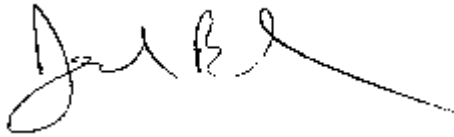
5.2 Appeal is by way of written notice to the Tribunal. You should include a copy of this Notice with your Appeal.

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

6. Publication

- 6.1 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