

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

And

In the Matter of **Complaint No.CA2633106**

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 for XYZ Ltd specialising in the sale of horticultural businesses and properties.

2. Complaint

- 2.1 The complaint has been lodged by Mr B and relates to the sale of his property at “the property” which operated as an avocado orchard.

- 2.2 The complainants appointed Mr A as their agent to sell the property on 16 September 2009. The licensee recommended an auction process and a marketing campaign was undertaken which culminated in an auction being held on 9 December 2009.

- 2.3 At the auction the reserve price was not met and negotiations post auction resulted in a Sale and Purchase Agreement being entered into at a price of \$1.65m which was \$200,000 less than the reserve price set by the complainants but nevertheless was signed by the complainants.

- 2.4 The complainants allege that the licensee did not act in their best interests. They maintain he deliberately undermined their confidence in the value of the property by quoting hearsay facts in an unbalanced manner with the express objective of reducing the price expectation and achieving a quick sale.

3. Licensee’s Response

- 3.1 The licensee responded in writing on 25 March 2010 providing full details on the sale of the property. A letter of support for the licensee was also received from Mr C, the customer relations manager of XYZ.

- 3.2 The licensee advises that the property was purchased by the complainants for \$2.05m two years ago and had a CV of \$1.95m. The licensee advises that he provided the complainants with sales data on comparable properties and other information on horticultural properties from banks and market commentators and that it was most unlikely, in the licensee's view, that the CV would be achieved.
- 3.3 On the day prior to the auction the licensee delivered a final marketing report to the complainants giving details on marketing feedback and an update on recent market activity. That report listed feedback from remaining interested parties and gave a clear indication that a value below the CV of \$1.95m could be expected. The licensee gave an indication in that report dated 4 December 2009 that an indicative price of between \$1.7m and \$1.8m could be expected. The licensee notes that despite this advice, the complainants chose to set their reserve price at \$1.85m.
- 3.4 At the auction, the eventual buyers were the only bidders and stopped bidding at \$1m. A post auction negotiation process then followed which culminated in an agreement to sell the property at \$1.65m.
- 3.5 The licensee maintains that he did not place any pressure on the complainants to sell the property but that rather they were keen to sell so that they could transfer capital to a new avocado processing venture. Although disappointed with the outcome, the licensee maintains that the complainants signed the final Sale and Purchase Agreement only after careful consideration and only after being asked by the licensee "are you both absolutely sure you want to sell your property at this level".

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 The 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 agent acted appropriately in the sale process and kept the complainants informed of market feedback during the course of the marketing campaign.
- 4.7 The Committee is satisfied that the licensee placed no undue pressure on the complainants to sell the property at the final agreed price and that the complainants had every opportunity to withdraw from the sale had they chosen to do so.

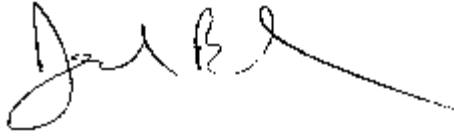
5. Right of Appeal

- 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 stroke extending to the right.

DAVID BARKER