

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

And

In the Matter of **Complaint No CA2650224**

In the Matter of **Mr A against Mr B**

Determination of Complaints Assessment Committee

Dated this 24th day of June 2010

Complaints Assessment Committee:

CAC No: 10019

Chairperson: Sandra Gill

Deputy Chairperson: Peter McDermott

Panel Member: Kay McKelvie

Determination of Complaints Assessment Committee

1 Complaint

- 1.1 The Licensee, Mr B, currently holds both an agent's and a salespersons licence and works for XYZ Realty Services Limited (trading as ABC).
- 1.2 The alleged actions leading to the complaint occurred on 26th and 27th August 2009 and are covered under s172 of the Real Estate Agents Act 2008 (REAA).
- 1.3 The complaint was received by the Real Estate Agents Authority (the Authority) on 27th January 2010.
- 1.4 The complaint was initially sent to the Real Estate Institute of New Zealand Inc (REINZ) but referred to the Authority following the implementation of the new REAA.

2 Background

- 2.1 The complainant, Mr A, in a letter of complaint dated 10th September 2009 to the REINZ, states that Mr B was very rude to him in a series of text messages exchanged between them on 26th and 27th August 2009 during the mortgagee sale of Mr A's home.
- 2.2 Mr A states that he was very surprised by the text messages as he believed that he and Mr B had an excellent relationship up until that time.
- 2.3 Mr A provided copies of the text message exchanges that are the subject of the complaint.
- 2.4 The text messages consisted of a series of exchanges that become more impolite on both sides as the conversation progressed.
- 2.5 On 26th August 2009, Mr B wanted to bring someone through the property, but Mr A didn't want him to and sent a text telling Mr B that he couldn't.

- 2.6 Mr A states that he then cancelled an appointment scheduled for 12pm that day so that he would be home but nobody turned up.
- 2.7 Then on the 27th August 2009, there was another series of text messages between Mr A and Mr B.
- 2.8 On 27th August 2009, Mr B asked if he could come and see Mr A at 3pm that afternoon. Mr A replied that he couldn't with the text message "*piss off*" sent to Mr B.
- 2.9 Mr B then sent Mr A a text message informing him that his property had sold and possession date would be 18th September 2009.
- 2.10 Mr A replied that the possession date would be in 28 (twenty eight) days on the 28th September 2009 and not before.
- 2.11 Mr B replied that "*Hard luck EIGHTY it is*".
- 2.12 Mr B sent a further text message approximately an hour and a half later stating "*Sorry if I was a bit short with you*".
- 2.13 Mr A states that he felt absolute horror and disgust that a real estate agent is able to speak to someone in the way that Mr B had spoken to him.
- 2.14 Mr A states that the text message stating "*Eighty*" meant that he thought that his property had been sold for \$80,000 (eighty thousand dollars) and this was very upsetting for both his mother and himself.
- 2.15 Mr A subsequently discovered that his property had in fact sold for \$145,000 (one hundred and forty five thousand dollars).
- 2.16 Following the two exchanges of text messages, Mr A states that he spoke to the management of ABC, a Mr P, but felt that Mr P was very "*ho hum about the thing*".

- 2.17 In a further e-mail to the REAA dated 13th May 2020, after Mr A was asked to comment on the response to the complaint from the Licensee, he states that he has *“really no care as to the story of lies that ABC wish to make up or the lies that Mr B wishes to spill”*.
- 2.18 Mr A goes on to say that he wishes to point out that *“this letter admits the reasons of the first complaint that he told me the house sold for EIGHTY not the 145K”*.
- 2.19 In the same e-mail, Mr A also makes a number of allegations that are outside the jurisdiction of this Committee.
- 2.20 Mr A also comments on the time taken for the complaint to be resolved – *“also I cannot believe that this matter is about to take almost a year to be sorted out”*.

3 Licensee Response

- 3.1 Mr B replied to the Authority in a letter dated 23rd March 2010 which was signed by both Mr B and the Principal of the Agency, Mr F.
- 3.2 Included with this letter was the response to the complaint that Mr F, as Principal of the Agency had previously been sent to the REINZ on 19th October 2009.
- 3.3 In the response letter to the REINZ, Mr F provides the following information.
- 3.4 ABC Rotorua were instructed by AAA Finance on 07th July 2009 to undertake a mortgagee auction of The Property.
- 3.5 Mr B was the salesperson liaising with AAA Finance.
- 3.6 Mr F states in his response, that the marketing of the property was fraught with delays, stress and abuse from Mr A from day one. Mr A had informed them that he would only accept text message contact and would not accept phone calls.

- 3.7 Mr F was sure that Mr B attempted to involve Mr A in the sale process but stated that Mr A's mood could change "*on a daily and sometimes hourly basis*".
- 3.8 Mr F states that despite appointments being made with reasonable notice, Mr A would cancel or change them, sometimes with only minutes before the agreed time.
- 3.9 The information provided by Mr F outlines a sequence of events where Mr A could be both co-operative and extremely unco-operative depending on his mood on the day and explains that during the time the Agency was attempting to sell the property, Mr A's text's to Mr B became progressively worse.
- 3.10 Mr F believes that Mr B became "*unfortunately overwhelmed*" trying to deal with Mr A's continually changing moods and behaviour.
- 3.11 On 26th August 2009, Mr B sent Mr A a text which read "*I'm bringing somebody through tomorrow at ELEVEN THITY sort your shit out*".
- 3.12 Mr F explains that at the time the text was sent, Mr B was on the verge of securing a very good price for the property and trying to work with a very uncooperative Mr A who would not allow the prospective buyer to return to the property for a further inspection.
- 3.13 The prospective buyer did decide to purchase the property despite not being able to view it again.
- 3.14 On 27th August 2009, Mr B did attempt to see Mr A to explain that the Agency had obtained a very good outcome and that the property was sold with possession date being 18th September 2009, but Mr A refused to see him.
- 3.15 Following Mr A's refusal to see him, Mr B sent the information by way of text message – "*You have sold poss date is 18 sept*". A series of text messages was then exchanged between Mr B and Mr A with Mr A objecting to possession date.

- 3.16 Mr F states that when Mr B sent Mr A a text with word “eighty” in it, this text related to the possession date, not the final sale amount. Possession date was to be the 18th September 2009 but Mr A wanted the 28th September 2009.
- 3.17 Following the sale of the property, Mr B worked with the purchaser and Mr A to try and ensure that the settlement went smoothly.
- 3.18 Mr F states that Mr B helped arrange a truck lent by the purchaser to enable Mr A to remove his belongings and also helped Mr A arrange the sale of any items he did not wish to take from the house. This was despite what Mr F describes as “*more ups and downs and abuse*” from Mr A to both Mr B and the purchaser.
- 3.19 Mr F acknowledges that the text on 26th August 2009 stating “*I’m bringing somebody through tomorrow at ELEVEN THITY sort your shit out*” should not have been sent but states that Mr B recognises this and ‘*apologises unreservedly*’ for this lapse in thinking.
- 3.20 Mr F states that this is an isolated incident caused by the “*extremely trying and stressful*” circumstances Mr B found himself in when trying to get the best price possible for the property and working with Mr A.

4 Information and Material Considered

- 4.1 The Authority received Mr A’s complaint against Mr B on 27th January 2010 and referred the complaint to the Complaints Assessment Committee (the Committee). Pursuant to section 79(1) of the REAA, on 11th March 2010 the Committee considered the complaint and determined to inquire into it.
- 4.2 Mr A included copies of texts he states were exchanged between himself and Mr B on 26th August 2009 and 27th August 2009.
- 4.3 The Committee invited Mr B to provide a written response to the complaint. A written response dated 23th March 2010 was received by the Authority, and attached to this was the response sent to the REINZ by Mr F, Principal of the Agency, dated 19th October 2009.

- 4.4 The Committee further considered the complaint on 22nd April 2010 and determined that Mr B's response be sent to Mr A for comment. Mr A was requested to respond within 10 (ten) days of receipt of the letter if he wished to provide any further comment.
- 4.5 Mr A replied by way of e-mail on 13th May 2010.
- 4.6 Having considered all the written information and supporting documentation provided by Mr A and also Mr B and the Principal of the Agency, Mr F, and having satisfied itself that it had completed its inquiry into the complaint, the matter was again considered by the Committee on 26th May 2010.
- 4.7 The hearing was conducted on the papers pursuant to section 90 of the REEA. Pursuant to section 90(2) the Committee made its determination on the basis of the written material before it.

5 Complaints Assessment Committee Determination and Reasons

- 5.1 The Committee has determined under section 89(2)(c) of the REAA that it will take no further action with regard to the complaint or any issue involved in the complaint.
- 5.2 It is clear from the information received by the Committee that Mr A was not an easy person to deal with and his letter of complaint and e-mails to the Authority also contain comments and allegations that at the least are inflammatory and confrontational, and are not related to this complaint.
- 5.3 The situation was not helped by the fact that the property was the subject of a mortgagee sale which would have been an unpleasant situation for Mr A to find himself in.

- 5.4 The Committee accepts that Mr B was in a stressful and somewhat trying situation, but would like to remind him that he should still ensure that any interaction he has with clients remain polite.
- 5.5 In regards to the second series of text message's exchanged between Mr A and Mr B, it is clear from the text message record provided by Mr A, that a misunderstanding occurred that was not of Mr B's making. The text's clearly show that the "conversation" was in regard to possession date and not the amount that the property had sold for.
- 5.6 Following the sale becoming unconditional, it would appear from the information before the Committee that Mr A did allow Mr B to continue to help him move out of the property.
- 5.7 The Committee would like to make the comment that the use of text messaging is not recommended in circumstances like this, but given the stipulation by Mr A, the Agency had limited options for contact.
- 5.8 The Committee did not regard any of the aspects of conduct which was the subject of the complaint as falling short of the standard that a reasonable member of the public is entitled to expect from a reasonably competent licensee (s 72(a)).
- 5.9 As the complaint related to conduct which occurred before the commencement of the REAA the Committee did not consider that section 72(b) could apply in this case because section 72(b) refers to contraventions by a licensee of the 2008 Act or of any regulations or rules made under this Act.
- 5.10 Nor did it consider Mr B had carried out real estate agency work which was incompetent or negligent (s 72(c)) or which would reasonably be regarded by agents of good standing as being unacceptable (s 72(c)).
- 5.11 Taking into account all the circumstances described above, in the Committee's view there is no basis upon which it could make a finding of unsatisfactory conduct in respect of any aspect of conduct which were the subject of complaint.

- 5.12 For these reasons the Committee has determined under section 89(2)(c) of the REEA that it take no further action with regard to the complaint or any issue involved in the complaint.

6 Publication

- 6.1 One of the functions of the Complaints Assessment Committee is to publish its decisions (section 78(h)).
- 6.2 The Committee has determined that this decision should be published in the interests of ensuring the disciplinary process remains transparent, independent and effective. The Committee also regards publication of this decision as desirable for the purposes of standard setting and it is in the public interest that the decision be published.
- 6.3 The Committee hereby authorises the Authority to publish this decision by whatever means it considers appropriate provided that the names and identifying details of both the complainant (including the address of the property) and the Licensee (including the name of his employer) and any named or identified third parties are suppressed from publication.

7 Right of Appeal

- 7.1 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.
- 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.

DATED this 24th day of June 2010

A handwritten signature in blue ink, appearing to read 'Sandra Gill', with a large, sweeping flourish above the name.

Sandra Gill
Chairperson