

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

And

In the Matter of **Complaint No.CA2652222**

In the Matter of **XYZ Real Estate Ltd
Licence No XXXXXXX**

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 XYZ Real Estate Ltd (New Zealand)

2. Complaint

2.1 The complaint has been lodged by Mr W and relates to conduct between 13 October 2009 and 2 November 2009. The complaint is considered by the Committee in accordance with Section 172 of the REAA.

2.2 The complainant is a solicitor who is acting on behalf of Ms M.

2.3 The complaint relates to the sale of a property at “the property”. The complainant alleges that a deposit of \$5,000 was not collected by the licensee as required. The complainant also alleges that no formal listing agreement had been signed by the complainant and therefore no commission is payable. The complainant also alleges that the licensee acted for the purchaser in their on-sale of the property which took place shortly after the settlement of the sale by Mrs M and at a price higher than her sale price.

3. Licensee’s Response

3.1 The Committee received a response from the licensee dated 27 April 2010.

3.2 The licensee advises that they did act for Mrs M on the sale of her property which agreement was signed on 22 September 2009 with a settlement date scheduled for 23 October 2009. The agreement stated that a deposit was payable to the licensee upon the agreement becoming unconditional.

3.3 The licensee wrote to Mrs M’s solicitor (the complainant) on 22 September enclosing a copy of the agreement and advising that they had not received a deposit. A further statement to the solicitor was sent by fax on 22 October 2009 recording that no deposit had been received by the licensee.

- 3.4 The licensee maintains that it was then the responsibility of the complainant and Mrs M to check whether a deposit had been paid by the purchaser.
- 3.5 The licensee advises that Mrs M signed an exclusive agency agreement on 25 February 2008. Mrs M then emailed the licensee on 16 May 2008 advising that she would probably withdraw the property at the end of May 2008.
- 3.6 The licensee confirms that the email is ambiguous as to whether Mrs M was actually cancelling the agency agreement.
- 3.7 The licensee's agent contends that when the purchaser became interested in the property, he contacted Mrs M regarding updating the authority. On her instructions a new authority was sent to her solicitor, the complainant, who would then sign the authority and return it to the licensee. The authority was sent to the complainant but it was not signed by either Mrs M or the complainant.
- 3.8 The licensee denies that they acted for the purchaser and their on-sale of the property. They point out that Clause 15 of the Agreement for Sale and Purchase stated that the purchaser would be entering into a contract for the on-sale of the property and that Mrs M had acknowledged that this was the position.
- 3.9 The licensee has provided a copy of the letter from the purchaser confirming that the licensee did not act for them in the on-sale of the property.

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 licensee did not act for the purchaser in the on-sale of the property.
- 4.7 The Committee note that there is no conclusive proof that the original listing agreement was ever formally terminated. The Committee's view is that the payment of commission to the licensee which the complainant maintains is not payable, is a commercial dispute between the parties and is not a matter on which the Committee needs to make a determination.
- 4.8 The Committee notes that the licensee did not put significant effort into the collecting of the deposit but they have adequately advised the complainant that the deposit had not been received and that the licensee has no further obligation to collect the deposit which then became the responsibility of the vendor and their solicitor.

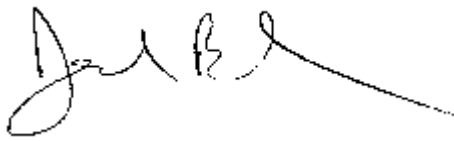
5. Right of Appeal

- 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

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