

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

And

In the Matter of **Complaint No.CA2652474**

In the Matter of **XYZ Ltd (New Zealand)
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 XYZ Ltd (New Zealand)

2. Complaint

2.1 The complainant is Mr A. His complaint relates to conduct in September 2009 and therefore the complaint is being conducted in accordance with Section 172 of the REAA.

2.2 The complaint relates to the listing of a property in New Zealand for commercial leasing. The complainant alleges that the licensee listed the property for lease without a signed authority and at a rental less than originally advised.

2.3 The complainant became aware of this when the licensee approached him seeking permission to show a prospective tenant through the property. The complainant immediately asked the licensee to delist the property and not to show it to the prospective tenant.

3. Licensee's Response

3.1 The licensee responded on 29 April 2010.

3.2 A representative of the licensee had met with the complainant to discuss the possible leasing of the property, the suggested rental and took photographs to assist with marketing.

3.3 The licensee then listed the property on their website and on Trade Me. The licensee acknowledges that although an agency agreement had been prepared, it had not been signed by the complainant prior to listing. The licensee advises that this was common practice with commercial leasing listings at that time.

3.4 The licensee provided copies of the website listings which confirm the rental is at the level previously advised to the complainant.

3.5 When the complainant asked the licensee to delist the property he did so immediately from their website but advises that it took 24 hours for Trade Me to remove the listing.

3.6 The licensee advises that his brokers and staff have now been fully trained to comply with the new listing requirements and regulations.

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 notes that the licensee did list the property without a signed agency agreement.

4.7 The committee notes that the rental advertised was consistent with the advice previously given to the complainant.

4.5 When asked to delist the property, the licensee immediately corrected the error.

4.6 The Committee are satisfied that whilst an error has been made by the licensee, this does not reach the level of unsatisfactory conduct.

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



DAVID BARKER