

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

And

In the Matter of **Complaint No CA2658972 and CA2659206**

In the Matter of **Debbie Lovegrove and Lovegrove Realty Ltd
License No 10004678 and License No 10021976**

Decision of Complaints Assessment Committee

Dated this 21th day of October 2010

Complaints Assessment Committee:

CAC10018

Chairperson: Deirdre McNabb

Deputy Chairperson: Colin Thomson (not present)

Panel Member: Barrie Barnes

Complaints Assessment Committee – Decision on Orders

Background

This is a complaint from Mr A regarding the conduct of licensees Debbie Lovegrove and Lovegrove Realty Limited. The complaint was referred to Complaints Assessment Committee 10018 and on the 14th day of September 2010 the Committee found that the licensees had breached Rules 6.3 and 9.1 of the REAA (Professional Conduct and Client Care) Rules 2009 and was guilty of unsatisfactory conduct in breach of section 72(a) and (d) of the Act.

The parties were invited to comment on the appropriate order(s) to be imposed in light of this finding and both Ms Lovegrove and Mr A made submissions.

Relevant Provisions

Having made a finding of unsatisfactory conduct against Debbie Lovegrove and Lovegrove Realty Limited the Committee must now decide what orders, if any, should be made under section 93 of the Act.

Section 93 provides:

93 Power of Committee to make orders

- (1) If a Committee makes a determination under section 89(2)(b), the Committee may do 1 or more of the following:
 - (a) make an order censuring or reprimanding the licensee:
 - (b) order that all or some of the terms of an agreed settlement between the licensee and the complainant are to have effect, by consent, as all or part of a final determination of the complaint:
 - (c) order that the licensee apologise to the complainant:
 - (d) order that the licensee undergo training or education:
 - (e) order the licensee to reduce, cancel, or refund fees charged for work where that work is the subject of the complaint:
 - (f) order the licensee—
 - (i) to rectify, at his or her or its own expense, any error or omission; or
 - (ii) where it is not practicable to rectify the error or omission, to take steps to provide, at his or her or its own expense, relief, in whole or in part, from the consequences of the error or omission:

- (g) order the licensee to pay to the Authority a fine not exceeding \$10,000 in the case of an individual or \$20,000 in the case of a company:
 - (h) order the licensee, or the agent for whom the person complained about works, to make his or her business available for inspection or take advice in relation to management from persons specified in the order:
 - (i) order the licensee to pay the complainant any costs or expenses incurred in respect of the inquiry, investigation, or hearing by the Committee.
- (2) An order under this section may be made on and subject to any terms and conditions that the Committee thinks fit.

Discussion

Panel members considered the submissions made by each of the parties relating to the finding of unsatisfactory conduct.

The members noted that the complainant and his family had suffered a significant degree of anxiety as a result of the conduct that gave rise to the complaint. Whilst the licensee was contracted to act for the complainant and his wife as vendors of the relevant property, their conduct left the complainant feeling that the best interests of him and his wife as property vendors were treated as secondary to those of the licensees. The Committee observed that the conduct complained of contributed to a picture of Ms Lovegrove on behalf of Lovegrove Realty Limited taking a high-handed approach that led to her clients feeling poorly treated and dissatisfied with the service that had been provided. It also observed that the impression that Ms Lovegrove created with the complainant and his wife was within her control.

When considering the submissions made by Ms Lovegrove (Lovegrove Realty Limited did not make submissions on penalty despite being given the opportunity to do so), the panel noted that Ms Lovegrove sought to discredit the comments from the complainant. She did not appear to acknowledge the impact of her behaviour from his perspective. It further noted the lack of remorse on the part of Ms Lovegrove when responding to the issues raised by the complainant. This is of concern, particularly after taking into account that Ms Lovegrove has been the subject of 2 previous complaints to the REAA and has already faced disciplinary action for unsatisfactory conduct in one of those cases. The Committee consider it particularly important that Ms Lovegrove develop an awareness of what is expected from her in terms of the REAA (Professional Conduct and Client Care) Rules 2009 given that she is an active licensee. As part of Lovegrove Realty Limited her own conduct is under scrutiny but she has the ability to influence the conduct of her colleagues.

It was noted in favour of the licensees that, in spite of the unsatisfactory experience of the complainant, a sale of the property that was the subject of the complaint was nevertheless achieved. In spite of this, by using material the complainant had approved for use in the sale of his property for an unauthorised purpose, the licensees contributed to the overall dissatisfaction of the complainant and inference that the licensees had put their own interests ahead of their client.

Decision

Pursuant to section 93 REAA 2008 the panel orders:

- That the licensees Debbie Lovegrove and Lovegrove Realty Limited be censured for breaches of Rule 6.3 (engaging in conduct likely to bring the industry into disrepute) and 9.1 (not acting in the best interests of a client and in accordance with his instructions) (section 93(1)(a)),
- That the licensees Debbie Lovegrove and Lovegrove Realty Limited be ordered to apologise in writing to the complainant (section 93(1)(c)) within 20 working days. The licensee to provide a copy of the apology to the REAA;
- That the licensee Debbie Lovegrove undergo formal training at the Open Polytechnic and complete the unit standard 26149: "Demonstrate knowledge of licensing and code of professional conduct under the Real Estate Agents Act 2008". Such training is to be completed at the licensees expense within 12 months of the date of this decision. The licensee is to provide the REAA with formal proof of completion of the required training within this 12 month period (section 93(1)(d));
- That the licensees make a payment of \$1000 to the complainant Mr A in recognition of the pursuit of potential financial gain through the improper use of his materials within 20 working days of the date of this decision, such payment to be borne by the licensees as to 70% Debbie Lovegrove, as to 30% Lovegrove Realty Limited (section 93(1)(f)(ii)). Proof of payment is to be provided to the REAA; and
- That the licensees pay fines to the Authority in the following sums: Debbie Lovegrove \$2000, Lovegrove Realty Limited \$1000 within 20 working days.

Publication

The Committee directs that this decision is to be published.

The Committee directs publication of its decision but omitting the names and identifying details of

the complainant (including the address of the property) and any third parties in the publication of its decision.

Right of Appeal

A person affected by a determination of a Complaints Assessment Committee may appeal to the Disciplinary Tribunal against a determination of the Complaints Assessment Committee within 20 working days after the date of this notice.

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

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

Signed

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke.

Deirdre McNabb
Chairperson
Complaints Assessment Committee
Real Estate Agents Authority

Date: 21 October 2010