

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

And

In the Matter of **Complaint No.CA2674236**

In the Matter of **Valma Olliver
Licence No.10004662**

DETERMINATION OF COMPLAINTS ASSESSMENT COMMITTEE

Dated : 14 June 2010

Complaints Assessment Committee:

CAC10029

**Chairperson
Deputy Chairperson
Panel Member**

David Barker
Joan Harnett-Kindley
Paul Morten

DETERMINATION OF COMPLAINTS ASSESSMENT COMMITTEE

1. Licensee Background

1.1 The licensee, Valma Olliver, works in Whangamata for MH Realty Ltd, a division of Bayleys Real Estate.

2. Complaint

2.1 The complaint was lodged by Mr T the principal of XYZ Realty Ltd also from Whangamata on 4 February.

2.2 Mr T alleges that in January 2010 Mrs Olliver contacted the vendor of a property over which Mr T firm had a sole agency. Mrs Olliver attempted to manipulate the sole agency by having the vendor agree in writing to paying commission directly to her company by passing the sole agent.

2.3 Mr T indicated that this is not the first time this sort of activity has occurred.

3. Licensee's Response

3.1 Mrs Olliver responded in writing on 16 April 2010.

3.2 Mrs Olliver acknowledges that she did approach the vendor firstly to ascertain whether the property was listed as a sole agency or a general agency.

3.3 The vendor did advise that a sole agency existed.

3.4 She discussed the vendor's expectations with the vendor and indicated that she would approach the sole agent to discuss a commission split.

3.5 Mrs Olliver advises that she did discuss this with Mr T but that the 20% commission split offered by Mr T was not acceptable.

3.6 Despite this, Mrs Olliver showed the prospective purchasers through the property which led them to putting an offer on the property. This was sent to the listing agent. The agreement sent to the agent included a clause inserted by Mrs Olliver to protect her position in relation to commission.

3.7 The clause was deleted by the vendor and subsequently agreed to by all parties. She advises that the full deposit was then paid to the sole agency and subsequently dispersed.

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 19 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) (b) of the REAA that it has been proved, on the balance of probabilities, that the licensee Mrs Olliver has engaged in unsatisfactory conduct as that term is defined in Section 72 of the REAA.

4.4 The Committee believes that Mrs Olliver did put the vendor at risk of paying two commissions.

4.5 Mrs Olliver had assumed that the sole agent would co-operate in the sharing of commission which she had no right to do.

4.6 The Committee believes that Mrs Olliver's conduct breaches rules 6.2, 6.3, 6.4, 9.2 and 9.12 of the rules of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009.

5. Penalty

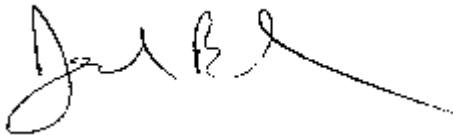
5.1 Having determined under Section 89 (2) (b) of the REAA that it has been proved to the required standard that Mrs Olliver has engaged in unsatisfactory conduct, the Committee has the power by virtue of Section 93 of the REAA to make an order in the nature of a penalty against Mrs Olliver.

5.2 Before it determines whether to make any orders available under Section 93, the Complaints Assessment Committee invites Mrs Olliver to make any submissions she may wish on the issue of penalty. The complainant will also be invited to make any submission he wishes in regards to penalty. Any submissions must be made to the Committee within 7 days from the date of this determination.

6. Right of Appeal

- 6.1 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.
- 6.2 Appeal is by way of written notice to the Tribunal. You should include a copy of this Notice with your Appeal.
- 6.3 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 black ink, appearing to read 'David Barker', with a long horizontal flourish extending to the right.

David Barker
Chairperson
Complaints Assessment Committee
Real Estate Agents Authority

Date: 14 June 2010