

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

And

In the Matter of **Complaint No CA 2677512**

In the Matter of **Mr C**
License Number XXXXXXXX

Decision of Complaints Assessment Committee

Dated this 30th day of June 2010

Complaints Assessment Committee:

CAC10027

Chairperson: Anne Darroch

Deputy Chairperson: Chris Rogers

Panel Member: David Russell

Complaints Assessment Committee - Decision to take no further action

1. The Complaint

- 1.1 Mr M has complained to the REAA about the conduct of Mr C of XYZ Realty Ltd in that an advertisement placed by Mr C failed to disclose that he is licensed and that he is an agent.

2. Material Facts

- 2.1. The Western Property Press publication for the week to 11 February 2010 included an advertisement for a property at “the property”, Auckland. The advertisement included two telephone numbers for Mr C and the statement “Auction at our office @ 6 p.m. 24th of February, unless sold prior.”
- 2.2 The advertisement did not show any logo or name referring to XYZ Realty Ltd or the statement that Mr C was a licensed real estate agent.

3. Relevant Provisions

(a) Real Estate Agents Act 2008

Section 72 Unsatisfactory conduct

For the purposes of this Act, a licensee is guilty of unsatisfactory conduct if the licensee carries out real estate agency work that –

- (a) falls short of the standard that a reasonable member of the public is entitled to expect from a reasonably competent licensee; or
- (b) contravenes a provision of this Act or of any regulations or rules made under this Act; or
- (c) is incompetent or negligent; or
- (d) would reasonably be regarded by agents of good standing as being unacceptable.

Section 73 Misconduct

For the purposes of this Act, a licensee is guilty of misconduct if the licensee’s conduct –

- (a) would reasonably be regarded by agents of good standing, or reasonable members of the public, as disgraceful; or
- (b) constitutes seriously incompetent or seriously negligent real estate agency work; or
- (c) consists of a wilful or reckless contravention of –
 - (i) this Act; or
 - (ii) other Acts that apply to the conduct of licensees; or
 - (iii) regulations or rules made under this Act; or
- (d) constitutes an offence for which the licensee has been convicted, being an offence that reflects adversely on the licensee’s fitness to be a licensee.

Section 121 Agent to display required name information

(1) In this section, -

...

required name information, in relation to an agent, means –

(a) the name of the agent and the fact that the agent is licensed under this Act; and

(b) if the agent's business as a real estate agent is not carried on in the agent's name, the name or style under which that business is carried on.

(2) Every agent must ensure that the required name information is displayed in a prominent place –

....

(c) on all notices, advertisements, and other material published by or on behalf of the agent in the course of the business.....

(b) Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009

Rule 5 Standards of professional competence

5.1 A licensee must exercise skill, care, competence and diligence at all times when carrying out real estate agency work.

Rule 6 Standards of professional conduct

6.4 A licensee must not mislead a customer or client, nor provide false information, nor withhold information that should by law or fairness be provided to a customer or client.

Rule 4 Interpretation

4.1 In these rules –

“customer” means a person who is a buyer or potential buyer of land or a business, and who is not a client as defined under section 4 of the Act.

4. Discussion

4.1 The Committee received a response to this complaint from Mr W who is the principal of XYZ Realty Ltd. The response included a letter from Mr C which stated that he had read and agreed with the comments made by Mr W.

4.2 Mr W explained the situation as follows:

“This matter came about from a typesetting error. The Auckland Western Property Press changed the physical size of their publication in the early part of the New Year. They failed to inform us of the new specifications (size) before we produced our first ad for their publication in 2010.....Our ads are produced in house and we submitted the first one of the year for publication on 25th January 2010. ... Although this size was wrong the Property Press was produced without any further consultation with us. In the process it was cropped by Property Press production removing our company details.”

4.3 Mr W provided emails to show that he had raised his concern about the cropping as soon

as he had become aware of it.

- 4.4 The Committee has considered Mr W's explanation and accepts that a genuine mistake occurred in this instance. Although section 121 requires that an agent "must ensure" that the required name information is displayed, the Committee considers that the licensee took all reasonable steps to do this, that it is difficult to determine where the fault for the mistake should be placed, and the Committee is satisfied that the problem has been rectified.

5. Decision

- 5.1 Section 80(2) of the Real Estate Agents Act 2008 provides that a Committee, may in its discretion, decide not to take any further action on a complaint if, in the course of the investigation of the complaint, it appears to the Committee, having regard to all the circumstances of the case, any further action is unnecessary or inappropriate.
- 5.2 After considering all the evidence provided, the Committee has decided that it will take no further action on this complaint as it considers that further action is unnecessary in light of all the circumstances.

6. Publication

The Committee directs that this decision is to be published. The complainant and licensee are not to be identified in the published decision.

7. 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



Anne Darroch
Chairperson
Complaints Assessment Committee
Real Estate Agents Authority

Date: 30 June 2010