

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

And

In the Matter of **Complaint No CA3117315**

In the Matter of **Mr S and XYZ Realty**  
**Licence No XXXXXXXXX**

---

**Determination of Complaints Assessment Committee**

Dated this 4<sup>th</sup> day of June 2010

---

**Complaints Assessment Committee:**

**CAC No: 10024**

## **Determination of Complaints Assessment Committee**

### **1 Licensee Background**

1.1 The Licensee against whom the complaint was made is Mr S of Auckland and his real estate company known as XYZ Realty (“the Licensee”), of Auckland.

1.2 Mr S has an agent licence under the Real Estate Agents Act 2008 (“the REAA”) and XYZ Realty also has an agent licence.

### **2 Complaint**

2.1 The complainant, ABC Limited (“ABC Ltd) is a non-bank mortgage lender which specialises in the provision of home loans for clients “with modest deposits”.

2.2 Ms C, who is the Business Development Manager for ABC Ltd alleged in the letter of complaint which she wrote on behalf of her employer, that ABC Ltd had a reason to believe Mr S is “part of a group of individuals attempting to defraud mortgage lenders such as ourselves”.

2.3 Ms C stated that recently ABC Ltd had received three different mortgage applications from three different individuals and “all of these applications have been found to be fraudulent.” Ms C stated that “the common thing linking these applications is that Mr S is the Real Estate Agent in every case.” Ms C stated that the mortgage applications which ABC Ltd had received had been supported by “counterfeit bank statements and passport details” and that Mr S had been involved in the sale and purchase transactions which had occurred either on the same day or a few days apart.

2.4 The complainant alleged that one “of these deals” involved the purchase of a property whereby an agreement for sale and purchase agreement had been presented to ABC Ltd showing the purchase price to be in the region of \$100,000

more than the listing price (she stated this had been discovered by the company's investigations).

2.5 The complainant stated that the Police had been notified and that the Police investigations "are continuing". Ms C stated she had contacted Mr S and he had confirmed that he had handled the relevant sales and had completed the agreements for sale and purchase.

2.6 The complainant supplied copies of the agreements for sale and purchase which had accompanied the mortgage applications in question. She also supplied print outs from the internet which she alleged showed "in most cases significantly lower listing price than the actual sale price." Details of the transactions were provided as follows:

- a. "the D Road property" ("the D Road property"); Agreement for Sale and Purchase dated 17 February 2010 between Mr B and Ms G (Vendors) and Mr V (Purchaser); Sale Price \$350,000. This property had been listed online on Trade Me and on [www.realestate.co.nz](http://www.realestate.co.nz) for \$285,000;
- b. "the K Road property" ("the K Road property"); Agreement for Sale and Purchase dated 17 February 2010 between Mr SB and Ms SB (Vendors) and Mr JV (Purchaser); Sale Price \$370,000. This property had been listed online on Google Maps for \$359,000; and
- c. "the D Lane property" ("the D Lane property"); Agreement for Sale and Purchase dated 23 February 2010 between Mr K (Vendor) and Mr JV (Purchaser); Sale Price \$324,000. This property had been listed online on [www.realestate.co.nz](http://www.realestate.co.nz) for \$325,000 and on Google maps for \$309,000.

2.7 The complainant expressed confidence that the mortgage brokers who had submitted the relevant mortgage finance applications for these transactions "were not part of the fraud". Ms C maintained she had interviewed "them all, and they appear to have presented the application in good faith".

### 3 **Information and Material Considered**

- 3.1 The Authority received the complaint against the Licensee on 22 March 2010. The Authority referred the complaint to the Complaints Assessment Committee. Pursuant to section 79(1) of the REAA, on 1 April 2010 the Committee considered the complaint under section 79 and determined to inquire into it. Given the seriousness of the allegations the subject of the complaint the Committee gave priority to undertaking its inquiry forthwith.
- 3.2 The Committee invited the Licensee to provide a written response to the complaint and this was received on or around 12 May 2010.
- 3.3 Mr S stated that at no time was he (or his office) directly involved with obtaining or supplying any form of “loan mortgage application documentation on any contact [sic] whatsoever with the Banks or Mortgage Broker [sic] who was handling the three purchasers loan applications”. He maintained that the “the documents” were submitted by “the purchasers and purchasers clients themselves” and that he had no part in that process.
- 3.4 Mr S maintained that he prepared relevant documentation in respect of the sale of each property including appropriate listings and written appraisals to support the listing prices; and he stated he gave the relevant REAA Guides to those involved.
- 3.5 Mr S stated that the listing price for “the D Road property” of \$365,000 fell within a reasonable market margin at that time. The listing price of \$329,000 on “the D Lane property” he regarded as “reasonable as derived from the appraised market value” and the listing price for “the K Road property” (\$385,000) was “very much influenced by the Value derived from a Registered Valuation done” by “registered valuers” in October 2008 and factoring in the “significant improvements done on the property itself”. Copies of the appraisals which Mr S completed in respect of each property and a copy of “the registered valuers” valuation report referred to above were provided.

3.6 Mr S admitted that he wrote up each of the three agreements for sale and purchase “as the Salespersons in good faith with the willing Vendors and Purchasers as appropriate”. He maintained the agreements which he drew up reflected “negotiated and agreed” contract prices between a willing buyer and a willing vendor.

3.7 Mr S gave a detailed explanation of the circumstances surrounding his involvement in negotiations and the preparation of the agreements for sale and purchase in respect of each property.

a. **The D Road property;** Mr S stated he had known the vendors (Mr B and his wife) for seven years. He stated they are “long term investors” who had bought many properties including at mortgagee auctions, but prior to his involvement in this transaction he had not sold them any properties. In January 2010 the vendors had come to his office “to list and later negotiate to buy and sell some of their investment properties through me.”

i. Mr S maintained that on 5 February 2010 the vendors came to his office and instructed him to take a sole listing on this property. Later that day Mr S inspected the property and prepared a written appraisal a copy of which he provided to the vendors together with a copy of the REAA Listing Guide. During the inspection Mr S was shown the vendors “extensive renovation” and this he stated, was factored into the “recommended Appraisal price”. As at 1 September 2007 the property had a “reasonably High Rating Valuation of \$305,000”. Mr S’s appraisal of the current market value on 5 February 2020 was “around \$340,000 - \$350,000 subject to approval property can be listed slightly higher for room for negotiation”. The listing price was recorded at \$365,000;

ii. On 17 February 2010 the vendors and the purchaser (whom Mr S described as “their [the vendors’] client”) came to his office and stated the parties wished to enter into an agreement for sale and

purchase. Mr S maintained he provided the purchaser with a copy of the REAA Sales and Purchase Guide and then he wrote up the “contract with a negotiated and a final agreed price of \$350,000 by the two willing parties”. The contract was subject to the purchaser’s confirmation of finance and settlement within 8 working days (by 5 March 2010);

- iii. Mr S stated that when he asked the purchaser who was arranging their finance he was advised by the purchaser “that they would try to talk to one or two mortgage brokers which they’re familiar with; the name they did not mention. I did not inquire further at that time as I thought that it would be best for them to independently sort out their finance rather than me creating unnecessary work load worrying about arranging mortgage for the purchaser; besides I was not in a position at all to help them in that area”. Mr S then faxed the signed agreement for sale and purchase to the solicitors for the vendors and the solicitors for the purchaser and he posted hard copies the following day.
- iv. On 22 February 2010 Mr S stated he telephoned the vendors regarding the release of the deposit. Mr S was “assured that he (the vendor) would release the deposit when the purchaser’s finance was approved which they were still working on.
- v. On 25 February 2010 Mr S faxed a copy of his Commission Statement to the vendors’ solicitors (commission of \$2000) and advised them he had not received the deposit. A copy of this fax was provided.
- vi. At 2.40pm the following day, 26 February 2010, the vendor came to Mr S’s office and advised him that the purchaser’s finance had not been approved and “the deal had fallen and would not go through”. No further action was taken.

**b. The K Road property;**

- i. On 1 February 2010 Mr B (the vendor in the D Road property transaction above) telephoned Mr S and advised that his brother wished to sell his property “the K Road property”. They made arrangements to meet the following day.
- ii. On 2 February 2010 Mr S met with Mr B and his brother at S Realty’s office “where a general listing...was done”. Mr S was provided with a copy of a valuation report prepared by “registered valuers” in October 2008 indicating a market value at that time of \$375,000. Mr S was advised the property had been renovated since the date of that valuation and the vendor (Mr B’s brother) “insisted that we list the property around \$385,000 to allow room for negotiations.” Mr S maintained he told them he would inspect the property and would get back to them which he did the following day. Mr S’s market appraisal was that the property was valued in the range of \$335,000-\$345,000 “and subject vendor approval listing can be higher to allow for negotiation.” The listing price recorded was \$385,000.
- iii. On 16 February 2010 the B brothers and their “client” Mr JV went to Mr S’s office and an “initial offer” on the “K Road property” was drawn up. The price was agreed the following day at \$370,000 (initials and signatures on the agreement for sale and purchasing evidencing the negotiations on price). The agreement was subject to a finance clause (8 working days) which Mr S maintained “the buyer wanted”. Mr S stated he specifically asked “the Buyer and the Vendor...who was arranging for the finance/mortgage and they [Mr B] advised me that they would try to arrange buyers finance through one of the mortgage brokers they know.” Mr S stated he

“reminded them that they must release the deposit as soon as possible and that I would contact them again for the deposit.”

- iv. On 17 February 2010 the agreement for sale and purchase was faxed to the solicitors for each party and Mr S gave copies to both parties who came to his office to get them.
- v. On 23 February 2010 Mr S telephoned Mr B the “check on the buyers finance and he advised me that it was not looking good and most likely the deal would fall.”
- vi. On 25 February 2010 Mr S faxed his Commission Statement to the vendor’s solicitors and requested advice on the progress of the Agreement.
- vii. On 1 March 2010 Mr S was advised by email from the vendor’s solicitors that “purchasers finance had fallen and agreement was at an end”.

**c. The D Lane property;**

- i. On 20 January 2010 Mr B (whom Mr S described as the “investor” in this transaction) telephoned Mr S at home and advised that he wished to meet the following day because he wished to list an investment property in D Lane.
- ii. On 21 January 2010 Mr S met with Mr B and his client, Mr K and as instructed he “wrote the listing” on the property and provided a written appraisal. A copy of the REAA Listing Guide was provided and Mr S’s commission was negotiated and agreed (\$2000). Mr S assessed the current market value as being in the range of \$315,000-\$325,000 but on his appraisal form he stated “to allow room for negotiation I suggest the prop be listed around \$339,000.” Mr S stated he asked for clarification of the identity of the vendor

and was advised that it was Mr K, who had purchased the property at a mortgagee auction. Mr S stated he inspected the property at 5.00pm and he met Mr B and Mr K briefly again and had “tea at Mr B’s [Mr B] home”.

- iii. Approximately four weeks later, on 21 February 2010, Mr B, Mr K and “their client”, Mr JV, met Mr S at his office. An agreement for sale and purchase was negotiated and written up by Mr S. Mr S maintained that at this meeting he asked if the purchaser’s loan had been approved and he was advised by Mr B and the purchaser that he [Mr B] “would try to help the purchaser arrange mortgage application with another suitable lender”.
- iv. Negotiations on price were not concluded until 23 February 2010 (\$324,000). The agreement which was concluded that day was subject to finance being approved within 8 days (by 5 March 2010, the same date for the D Road property transaction)
- v. During the meeting on 23 February 2010 Mr B allegedly commented that the loan amount that had been offered for the K Road property (above) “was not looking good and that “the D Lane property” was of lesser amount and more suitable considering purchasers finance”.
- vi. Mr S faxed the agreement to the respective solicitors the following day and additional copies given to Mr B, and the vendor and purchaser.
- vii. On 5 March 2010 Mr S was advised by Mr B that the purchaser’s finance had not been approved and no further action was taken. The Commission Statement which Mr S claimed he had prepared on 2 March 2010 was never sent to the vendor’s solicitors (commission of \$2000).

3.8 Mr S provided a copy of a letter which Mr B “Property Investor” had written for submission to the Complaints Assessment Committee. The letter was signed by Mr B and his wife, Ms B, and also by Mr B’s brother and sister-in-law (the vendors of the K Road property). In his letter Mr B stated that the three loan applications in question were “separately and independently made by the PURCHASER THEMSELVES” and that Mr S had no part in the process of arranging purchaser finance.” Mr B maintained that he was satisfied with the market appraisals which Mr S had given him for the properties, particularly as they took into account any renovations which had been carried out. He claimed that the agreed purchase price for each of the three properties “were negotiated all in good faith by a willing buyer(s) and a willing vendor(s)”.

#### 4 **Further Meeting**

4.1 Having received the Licensee’s written response to the complaint and the other information described above, the Complaints Assessment Committee met again on 19 May 2010 to discuss the material it had obtained and to determine whether or not any further inquiries or action were necessary.

4.2 In summary, at the meeting the Committee considered the following written material:

a. Ms C’s complaint on behalf of ABC Ltd and the supporting documentation including copies of the relevant agreements for sale and purchase and the internet advertising for the three properties in question together with Terralink Comprehensive Title and Transaction Reports for each property (report dates 30 March 2010);

b. Letter from the Licensee in response to the complaint, dated 12 May 2010 and all documentation supplied in support including a joint letter from the vendors of both the “D Road property” and “K Road property” respectively as referred to above; Residential Listing Details for each property; market appraisals for each property given to the vendors by Mr

S; a copy of a “registered valuers” valuation report dated October 2008 for the K Road property on which Mr S maintained he had largely based his market appraisal; certificates of title and various correspondence between Mr S and his clients including commission statements.

**5 Complaints Assessment Committee decision under section 80(2) of the REAA and reasons**

- 5.1 At its meeting on 19 May 2010 the Committee made a decision under section 80(2) of the REAA, not to take any further action on the complaint. 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 at this time.
- 5.2 The Committee considered the market appraisals and other documentation together with the explanations given by Mr S for the events surrounding the transactions in question. Further it took into account the comments in the letter from Mr B which Mr S supplied in support of his response. At this time the Committee has no reason to question Mr S’s involvement in the transactions. There is no basis on which the Committee could conclude that Mr S had any direct involvement in the finance applications which were ultimately made by the respective purchasers and which the complainant advised had been supported by counterfeit bank statements and passport details. The Committee accepted Mr S’s explanation (supported by Mr B) that he had no direct part in the finance application process. On their face the market appraisals and concluded agreements for sale and purchase appear to be legitimate, as do Mr S’s explanations for the prices ultimately agreed between the parties. While the Committee does have some doubts as to why the vendors and purchasers did not deal with their solicitors, rather than through Mr S when negotiating the agreements for sale and purchaser, and about why a Licensee would want to be involved in transactions negotiated in this manner, the Committee does not consider it is open to it on the evidence before it to take the matters raised in the complaint any further.
- 5.3 There is no reasonable basis upon which the Committee could conclude at this time that Mr S was part of the alleged fraud. The Committee recognises that it is not for it to express any views it may have as to the involvement in the alleged

fraud of the other parties involved in the transactions in question and accordingly, does not do so.

5.4 The Committee wishes to record that if at the conclusion of the Police investigation, there is evidence which implicates Mr S in any fraudulent activities relating either to the transactions the subject of this complaint, or any other real estate transactions, then the complainant and/or Police should notify the Authority so that the matter may be referred to a Complaint Assessment Committee for consideration at that time.

5.5 The Committee directs that when the complainant is provided with a copy of this Determination she should also be provided with a copy of Mr S's full response to the complaint, for her information. The Committee also authorises the Authority to provide the Police with copies of this Determination and Mr S's full response to the complaint for the purposes of assisting the Police with their inquiries.

## **6 Publication**

6.1 One of the functions of the Complaints Assessment Committee is to publish its decisions (section 78(h)).

6.2 The Committee has determined that this decision should be published in the interests of ensuring the disciplinary process remains transparent, independent and effective.

6.3 The Committee hereby authorises the Authority to publish this decision by whatever means it considers appropriate. The nature of the complainant's business as a non-bank mortgage lender which specialises in the provision of home loans for clients with modest deposits may be published. However the name of the complainant (Ms C and ABC Ltd Limited) should be suppressed from publication as should the name and identifying details of the Licensee (Mr S and XYZ Realty respectively) and any other named or identified third parties. In addition the addresses of the properties identified in the decision should be suppressed.

7 **Right of Appeal**

- 7.1 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.
- 7.2 Appeal is by way of written notice to the Tribunal. You should include a copy of this Notice with your Appeal.
- 7.3 Further information on lodging an appeal is available by referring to the Guide to Lodging an Appeal at [www.justice.govt.nz/tribunals](http://www.justice.govt.nz/tribunals).

**Dated** this 4<sup>th</sup> day of June 2010



---

**Jo Hughson**  
**Chairperson**