

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

And

In the Matter of **Complaint No CA3259686**

In the Matter of **Iron Bridge Real Estate Limited**

License number 10018225

Decision of Complaints Assessment Committee

Dated this 27th day of October 2010

Complaints Assessment Committee:

CAC10041

Chairperson: Chris Rogers

Panel Member: Denise Bovaird

Complaints Assessment Committee

Decision finding unsatisfactory conduct

The Complaint

1. The complaint alleges a breach of sec121(2)(c) REAA 2008 in that an advertising flyer developed and distributed by the licensee, failed to display in the required manner, the licensee's status as a licensed real estate agent under the REAA 2008.
2. The complainant maintains that the flyer distributed by the licensee contained statements that "cast slurs on the majority of reputable real estate companies" (breaching rule 6.3 - A licensee must not engage in any conduct likely to bring the industry into disrepute.)

Material Facts

The Committee was provided with evidence in the form of a flyer that was allegedly recovered from the ground near a property being marketed for sale by the licensee.

The content of the flyer is the subject of the complaint along with the apparent omission of identifying references to the licensee's status under the REAA 2008.

Relevant Provisions

Section 121 Agent to display required name information

- (1) In this section,—
business, in relation to an agent, means the agent's business as a real estate agent
- 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—
- (a) at each office or shop maintained by the agent for the purposes of the business; and
 - (b) on every website maintained by the agent for the purposes of the business; and
 - (c) on all notices, advertisements, and other material published by or on behalf of the agent in the course of the business; and
 - (d) on all letters, accounts, contractual documents, agreements, and other documents sent or handed out, entered into, or published by or on behalf of the agent in the course of the business.
- (3) The required name information must be capable of being easily read from outside each office or shop maintained by the agent for the purposes of the business.

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.

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

6 Standards of professional conduct

6.3 - A licensee must not engage in any conduct likely to bring the industry into disrepute.

Discussion

The licensee maintains that an error occurred during the printing process resulting in the bottom line of text containing the required element of identification being "dropped off the bottom of the page" and that the mistake was corrected once detected.

The licensee further contends that the words "licensed (REAA)" appearing in a photograph of a sign contained in the body of the flyer are sufficient compliance with sec 121 REAA 2008.

The flyer in question does not contain the elements of identification required by section 121 REAA 2008.

Printed advertising material was allowed to leave the office and be dispersed in to the public arena without due care and attention to content and detail.

It is incumbent upon all licensees to maintain standards of professionalism and compliance with good agency practice as encouraged by the rules, goals and objectives of the REAA 2008.

The committee finds that whilst blunt and subjective, the wording of the flyer would not cause sufficient offence to warrant disciplinary consideration.

Decision

The Committee has determined under Section 89 (2) (b) of the Real Estate Agents Act 2008 (the Act) that it is been proven to the required standard that the licensee, Iron Bridge Real Estate Limited, has engaged in unsatisfactory conduct in terms of 72(b) of the Act.

Notwithstanding this finding it is the Committee's view that this conduct is at the lower end of the scale of unsatisfactory conduct and taking into account the fact that the licensee has corrected the omission that caused a breach of the act it is the decision of this Committee that we impose no further penalty or censure other than our finding.

Publication

The Committee directs that this decision is to be published.

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



Chris Rogers
Chairperson
Complaints Assessment Committee
Real Estate Agents Authority

Date: 27 October 2010