

Complaints Assessment Committee – Decision finding unsatisfactory conduct

1. The Complaint

- 1.1 Mr D alleges that Ms C used false details in regard to the land area of a property in an advertisement.
- 1.2 Ms C holds a salesperson's licence and is employed by XYZ.
- 1.3 The alleged conduct occurred in February 2010 and the complaint was received by the Real Estate Agents Authority (the Authority) on 6 April 2010.

2. Background

- 2.1 Mr D states that the advertising for a property he subsequently purchased stated that the land was 4.9 acres when it was in fact 3.71 acres.
- 2.2 Mr D goes on to say that on the contract he signed, the property was listed as 1.5020 ha which in fact equals 3.71 acres not the 4.9 acres noted in Ms C's advertisement.
- 2.3 Mr D states that this disparity was only picked up by the LIM report he obtained prior to purchasing the property.
- 2.4 Mr D acknowledges in his complaint that he could have withdrawn from the contract once the LIM report noted the disparity, but decided to continue and did purchase the property.
- 2.5 Mr D states that "I do not believe that agents should be allowed to make such gross, false claims, or that they should be allowed to use non-metric units".
- 2.6 Mr D provided the Committee with a copy of the "false" advertisement and also a copy of the LIM report.
- 2.7 When spoken to by a REAA Investigator, Mr D stated that he did not raise the issue with Ms C because he could not change the size of the property and the sale was at the contract exchange stage when the discrepancy was noted.
- 2.8 Mr D also informed the Investigator that he continued with the purchase "because the size did not greatly affect their decision to purchase".
- 2.9 Mr D informed the Investigator that he mainly complained about the misrepresentation because Ms C had also asserted that electrical work had been carried out by a registered tradesman when in fact it had not been.
- 2.10 Mr D's complaint relates to misleading advertising by Ms C.

3. Licensee's Response

- 3.1 A response was received from Ms C via e-mail on 6 May 2010 and then a further written response was received by the Authority on 25 May 2010. Attached to the response received on 25 May 2010 were copies of e-mail correspondence between Ms C and Mr D.
- 3.2 In her responses, Ms C states that until she received the letter from the REAA requesting

her to respond to Mr D's complaint, she had not been aware of any issues "despite the multiple communications I have had with [Mr D] subsequent to the signing of the sale and purchase agreement." Ms C states that this communication continued even after Mr D had commenced living at the property and provided copies of e-mail evidence of this.

- 3.3 Ms C states that she has reviewed the flyer (advertisement) and the contract, and acknowledges that there is clearly a mistake on the flyer with regard to the land area.
- 3.4 Ms C states that she apologises for this and intends to make sure it does not happen again in the future.
- 3.5 Ms C states that "As you may be aware it is common place for people to have land areas described as acres rather than hectares, although this is the "old" way it is generally more accepted and understood by the public."
- 3.6 Ms C goes on to state that "Notwithstanding this I still understand that there is a requirement for this information to be accurate".
- 3.7 Ms C states that all the information she used in her advertising, and that she gave to Mr D, was given to her by the vendors. Ms C states that she had had previous dealings with the vendors and had found them very astute and pedantic people and had no reason to doubt what they were telling her.
- 3.8 Ms C states that the discrepancy was picked up during the LIM report, and at that stage Mr D could have withdrawn from the contract.
- 3.9 Ms C states that Mr D was "aware of the "error" prior to confirming the purchase of the property and that he then accepted the "new" land area and confirmed the purchase with this knowledge".
- 3.10 Ms C states that she is very sorry that the error occurred and would like to apologise to Mr and Mrs D, but would like to give the apology in person.
- 3.11 Ms C states that, in future, she will check the accuracy of all information in an advertisement, and that this type of situation will not occur again.

4. Information and Material Considered

- 4.1 The Real Estate Agents Authority ("the Authority") received Mr D's complaint against Ms C on 6 April 2010 and referred the complaint to the Complaints Assessment Committee. Pursuant to section 79(1) of the Real Estate Agents Act 2008 (the REAA), on 6 May 2010 the Committee considered the complaint and determined to inquire into it.
- 4.2 Mr D provided the Committee with a copy of the "false" advertisement and also a copy of the LIM report.
- 4.3 The Committee invited Ms C to provide a written response to the complaint. A response was received from Ms C via e-mail on 6 May 2010 and then a further written response was received by the Authority on 25 May 2010. Attached to the response received on 25 May 2010 were copies of e-mail correspondence between Ms C and Mr D.
- 4.4 Having received the written response from Ms C, the matter was again considered by the Committee on 5 July 2010.
- 4.5 At that meeting, the Committee decided to obtain legal advice regarding the REAA provisions from the Authority.

- 4.6 Having satisfied itself that it had completed its inquiry into the complaint the matter was again considered by the Committee on 16 August 2010.
- 4.7 The hearing was conducted on the papers pursuant to section 90 of the REEA. Pursuant to section 90(2) the Committee made its determination on the basis of the written material before it.

5. Complaints Assessment Committee Determination and Reasons

- 5.1 The Complaints Assessment Committee has determined under section 89(2)(b) of the REAA that it has been proved that on the balance of probabilities, Ms C has engaged in unsatisfactory conduct albeit at a lower level.
- 5.2 It is clear from the evidence provided to the Committee, that the behavior of Ms C fell short of the standard that a reasonable member of the public is entitled to expect from a reasonable competent licensee (s72(a) of the Act).
- 5.3 Ms C has committed a breach of 6.4 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009 which is under s14 of the REAA.
- 5.4 Ms C acknowledges that the area of land described in her advertisement, although based on information given to her by the vendors, was incorrect, but informs the Committee that she has now taken steps to ensure that such a situation will not happen again in the future.
- 5.5 The Committee does note that Mr D did discover the discrepancy upon receiving the LIM report on the property and could have withdrawn from the contract at that stage, but decided to purchase the property in full awareness of that discrepancy.
- 5.6 For these reasons the Committee has determined under section 89(2)(b) of the REAA that it has been proved that Ms C has engaged in unsatisfactory conduct as set out in s72(a) of the Act albeit at a lower level.
- 5.7 The Committee makes a determination under s93 (c) and makes an order that Ms C apologise to Mr D in writing within 30 days of receiving the decision and Ms C is to notify the Committee in writing that this has been done.

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. The Committee also regards publication of this decision as desirable for the purposes of standard setting and it is in the public interest that the decision be published.
- 6.3 The Committee directs publication of its decision but omitting the names and identifying details of the complainant (including the address of the property), the licensee (including the name of her employer) and any third parties in the publication of its decision.

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.

Signed



Sandra Gill
Chairperson
Complaints Assessment Committee
Real Estate Agents Authority

Date: 27 September 2010