

# Complaints Assessment Committee– Decision finding unsatisfactory conduct

## 1 Complaint

- 1.1 Mrs P alleges that XYZ behaved in an unprofessional manner in their dealings with her and also created unnecessary stress for her by their behaviour towards her.
- 1.2 Mrs P further alleges that Mr W, Principal Officer of XYZ, behaved in a disrespectful and bullying manner towards her, and that other agents at XYZ did not carry out their duties as real estate agents undertaking the sale of her property as they should have.
- 1.3 The alleged conduct leading to the complaint occurred in October 2009 and is covered under s172 of the Real Estate Agents Act 2008 (REAA).
- 1.4 The complaint was received by the Real Estate Agents Authority (the Authority) on 9 April 2010.

## 2 Background

- 2.1 Mrs P had listed her property with XYZ and the events relating to this complaint occurred on 24, 25 and 26 October 2009. Mrs P is an elderly lady whose husband was ill in hospital at the time these events occurred.
- 2.2 Mrs P states that on 24 October 2009, Ms H of XYZ phoned Mrs P around 3.30pm to ask if Mr D, another agent with XYZ, could bring through a Mr and Mrs B to view the property. Mr and Mrs B were from Australia and looking to purchase property. Ms H was “*on a boat*” and couldn’t bring them to the property herself.
- 2.3 Mrs P states that she agreed that Mr D could do this, but also told Ms H that Mr D should come and view the property himself first as he had not been there before and did not know the property.
- 2.4 At around 4.45pm, Mrs P states that “*a man arrived on my doorstep and asked if this was the house for sale?*” Mrs P states that she thought it was Mr D, but the man told her that his name was R and asked if he could view the house with his wife and father.
- 2.5 Mrs P states that she thought it was a new salesperson at XYZ until they told her they were actually Mr and Mrs B who wanted to view the property before they returned to Australia.
- 2.6 Mrs P states that at this point, neither she nor Mr and Mrs B had been contacted by XYZ.
- 2.7 Mrs P states that Mr and Mrs B viewed the property, told her that they liked it, and then left.
- 2.8 Mrs P states that she then phoned Ms H on her cell phone and told her that Mr and Mrs B had viewed the property and would be returning to see Mrs P after lunch the next day. Mrs P goes on to state that she told Ms H that Mr and Mrs B had liked the property and that Mrs P was “*99% sure I have sold the house they are coming back tomorrow after lunch and they will want to sign up*”. Mrs P states that Ms H asked if she would like Mr D to be there when Mr and Mrs B returned.
- 2.9 Mrs P states that she asked Ms H why Mr D should be there. Mrs P states that she thought this was an “*opportunity [for Ms H] to come back the next morning and do an agreement or at least pass it on to a superior as both [Ms H] and [Mr D] are new and have no*

*experience*". Mrs P believes that if an agent had accompanied Mr and Mrs B, an agreement would have been signed on the afternoon of 24 October 2009.

- 2.10 Mrs P states that Mr and Mrs B arrived after lunch on 25 October 2009 for another viewing. During the time Mr and Mrs B were there, Ms H phoned Mrs P to ask if Mr and Mrs B had arrived. Mrs P informed her that they had.
- 2.11 Mrs P states that she and Mr and Mrs B "*discussed everything we agreed on a price*".
- 2.12 Mrs P states that "*at this stage, neither myself or [Mr and Mrs B] had been contacted by [Mr D]. We had a purchaser wanting to buy, a seller wanting to sell and not an agent in sight.*" Mrs P goes on to state that she then phoned the XYZ office and spoke to Mr S and outlined the situation to him. Mr S informed her that he would call Mr W (Principal) and phone her back.
- 2.13 Mrs P states that she and Mr and Mrs B then decided that they would meet at XYZ's office as Mrs P wished to negotiate the commission as she had done all the work herself.
- 2.14 Mrs P states that, after Mr S had returned her call, Mr and Mrs B then went to XYZ to sign an offer for the property.
- 2.15 Sometime later that day, Mrs P states that Mr S phoned her and asked if he and Mr W could come and see her. Mrs P states that she agreed that they could.
- 2.16 Mrs P states that when Mr S and Mr W arrived, Mr S informed her that he thought that she was unhappy with XYZ.
- 2.17 Mrs P states that she agreed that she wasn't happy with the service provided by XYZ and believed that they owed her an apology given what had happened over the weekend and that they hadn't looked after her property.
- 2.18 Mrs P states that Mr W then went red in the face and started to shout at her saying "*We've done a lot of work for you this weekend... we don't owe you an apology.*"
- 2.19 Mrs P states that "*every time I opened my mouth he shouted me down*" until Mrs P asked Mr W and Mr S to leave her home. Mrs P states that Mr W continued shouting at her what a good job they'd done for her as he was walking out of the house.
- 2.20 Mrs P states that later that day Mr S phoned her and apologised for what had happened. She goes on to say that Mr S asked her if they could work through the situation, but Mrs P informed him that she couldn't see how they could and didn't want to discuss it any more.
- 2.21 In a further phone call later that evening, Mrs P states that Mr S again asked if they could come to some arrangement, so Mrs P said yes depending on the commission payable to XYZ. Mrs P states she reminded them that she had done all the work to get the sale and she would not pay the full commission given the service she had experienced during that weekend. No agreement was reached as Mr S would not negotiate the commission.
- 2.22 On 26 October 2009, Mrs P states that Mr and Mrs B called to visit as they were worried about her welfare.
- 2.23 Mrs P states that while Mr and Mrs B were with her, Mr S arrived with a letter of apology from Mr W. Mrs P states that Mr S read the apology and agreed that things had been said to her that shouldn't have been said. Mrs P goes on to state that Mr S acknowledged that Mr W had misread the situation.
- 2.24 Mrs P states that Mr B told Mr S "*you came into this house with this lady on her own with a very sick husband and you bullied her*". Mrs P states that Mr S acknowledged that "*yes I*

*apologise that shouldn't have happened*". Mrs P states that there was then a general discussion with both herself and Mr and Mrs B informing Mr S of their general dissatisfaction. The discussion included the reduction of commission payable but Mr S was adamant that XYZ would not reduce their commission.

- 2.25 Mrs P attached an e-mail dated 29 October 2009 from Mr and Mrs B to her complaint. Mr and Mrs B confirmed that no agent contacted them to take them to view the property despite the fact that they were only in the area for a short time before returning to Australia and that they had expressed an interest in viewing the property, that Mrs P took them around the property and negotiated a price, that they were present when Mr S arrived to apologise for what had happened the previous day, and that Mr S acknowledged he and Mr W *"had misread the situation and acted inappropriately."*
- 2.26 Once the response from the licensee was received by the REAA, Mrs P was given the opportunity to make any final comment. Mrs P provided a final comment in a response dated 3 June 2010.
- 2.27 Mrs P states that the response from Mr W as Principal of XYZ contradicts their own written apology given to her by Mr S. She is clear that the behavior shown towards her by Mr W was inappropriate and that he did shout at her. She is also clear that XYZ did not do their job properly. She believes that they *"find it very difficult to just front up, admit they made a mistake, and get on with it"*.

### **3 Licensee Response**

- 3.1 A response was received on 26 May 2010 from Mr W (Principal/Managing Director of XYZ) on behalf of XYZ.
- 3.2 Mr W states that his first involvement with Mrs P was on *"24 October 2009"* when he was introduced to Mr and Mrs B as potential buyers from Perth, Australia.
- 3.3 Mr W states that Mr and Mrs B requested that XYZ *"draw up an agreement based on what [Mr and Mrs B] described as "the basis of an agreement already discussed with [Mrs P] and agreed to by the parties.""*
- 3.4 Mr W states he first obtained an overview of the situation from his staff and then proceeded to put together a contract as requested by Mr and Mrs B.
- 3.5 Mr W states *"I was concerned with regard to two matters which I discussed with the proposed Purchasers (a) the advice from the purchasers that the commission was to be reduced by approximately 50% and (b) I was concerned that there was no reference to the lack of a pool and spa fence and the wood burner had no approval."*
- 3.6 Mr W states that in regard to (b) in the paragraph above, Mr and Mrs B informed him that they had discussed these matters with Mrs P and reached agreement and to leave them out of the contract. XYZ also suggested that Mr and Mrs B obtain a LIM report or inspected the Building File but this was also turned down.
- 3.7 Mr W states that he informed Mr and Mrs B that the matter of commission was between the vendors and XYZ and that it was *"not our normal policy to reduce commission except in exceptional circumstances"*.
- 3.8 Mr W states that once he had confirmed the details that Mr and Mrs B wanted in their offer, he arranged to meet them in an hour's time so that they could approve and sign the contract.

- 3.9 Mr W states that when Mr and Mrs B returned to sign the contract, it was “*obvious that they had been in touch with [Mrs P] as they reconfirmed the contract as discussed and brought up the commission reduction on 3 to 4 separate occasions*”. Mr W goes on to state that “*They also advised [Mrs P] that when the contract was signed [Mr S] and [Mr W] would be arranging a time to discuss and present the agreement.*”
- 3.10 Mr W states that once the contract was signed, Mr S contacted Mrs P and arranged to call on her to present the contract.
- 3.11 Mr W states that when he and Mr S arrived, they were “*met by a highly agitated and very aggressive [Mrs P], and for some reason this aggression seemed to be aimed at me*” although he had never met her previously.
- 3.12 Following introductions, Mr W states that they all sat and Mr S started his presentation of the offer. Mr W states that Mrs P interrupted and said that she was very upset as “*she felt [Ms H] had not done her job... and made it quite clear that [Ms H] (the salesperson concerned) should make her property a priority over family.*”
- 3.13 Mr W states that he said to Mrs P that he felt that her accusations were a little unfair, because it was essential the sales staff are able to get a balance in their life between business, family and personal time. Mr W believed that Ms H had made appropriate arrangements in involving Mr S and himself to be available if a contract was required.
- 3.14 Mr W states that at that stage, Mrs P asked him if he was supporting Ms H, to which he replied yes and that he would like to explain why.
- 3.15 Mr W states that “*[Mrs P] then dropped her bombshell by saying “in that case you might as well piss off because I don’t want to talk to you any more”, and she opened the front door and indicated that we should leave.*”
- 3.16 Mr W states that he endeavoured to retrieve the situation by suggesting that there was a misunderstanding between them and asking if they could sit down and discuss what was obviously a concern to Mrs P, but she declined to do so. He and Mr S then left.
- 3.17 Mr W states that following that meeting with Mrs P, he believed that it was obvious that he was her target, so made the decision it would be best if Ms H or Mr S were to communicate with her from then on.
- 3.18 Mr W states that XYZ is “*strongly of the opinion that the major cause of our problem was the Australian purchasers who were trying to buy a property at a bargain price.*”
- 3.19 Mr W states that at this time he made two decisions:
- a) Despite it not being of their making, he wanted to try and diffuse the situation so to this end wrote a letter to Mrs P apologising for his lack of sensitivity.
- Although he believed he gave an honest answer to Mrs P’s question, with the benefit of hindsight he believes he could have handled it differently.
- b) He contacted Mrs P’s solicitor (Mr G) to advise him of the background, the offer and details of the aborted meeting.
- Mr W suggested that he send the contract to Mr G and also pointed out the issues with the pool and spa fence etc.
- 3.20 Mr W states that Mr G came back to him and confirmed that Mrs P was in a very stressed condition largely because she was virtually on call because of her seriously ill husband.

- 3.21 Mr W goes on to state that Mr G advised him that he had altered the contract to protect the vendor (Mrs P) in relation to the pools and wood burner. During this conversation, Mr G also informed Mr W that Mrs P was adamant regarding the maximum commission she would pay which was \$10,000 (ten thousand dollars). The normal commission on the sale price would be \$19,000 (nineteen thousand dollars) plus GST. The asking price for the property was \$595,000 (five hundred and ninety five thousand dollars) and the offer from Mr and Mrs B was for \$550,000 (five hundred and fifty thousand dollars) unconditional.
- 3.22 Mr W states that after due consideration, and to resolve the situation, he agreed to accept \$10,000 (ten thousand dollars) as full commission payment providing the offer made by Mr and Mrs B was successful.
- 3.23 Mr W states that when the agreement as amended by Mrs P's solicitor was presented to Mr and Mrs B, they subsequently withdrew and the agreement was terminated.
- 3.24 Mr W states that XYZ then continued to market the property and sold it for the full asking price of \$595,000 (five hundred and ninety five thousand dollars) on 11 November 2009 at which time full commission was paid by Mrs P.
- 3.25 Mr W is adamant that he did not shout or bully Mrs P. He states that he is an experienced negotiator and to behave in that manner would be "*the kiss of death to any potential negotiation*". Mr W states that this can be confirmed by Mr S who was present at the time.
- 3.26 Mr W states that he believes that "*the major problem was created by the potential purchasers maneuvering to obtain a very cheap property*" which XYZ was able to sell for its full asking price some two weeks later.
- 3.27 Included with Mr W's response was Mrs P's instructions to XYZ as to how she wished the sale process to be conducted, file notes from Ms H, a copy of his letter of apology to Mrs P, file notes from Mr D and a statement from Mr S.
- 3.28 Mr S states that he was present at the meeting with Mrs P with Mr W present and states that Mr W "*did not shout at or bully [Mrs P].*" He goes on to state that the meeting lasted around five minutes and that he and Mr W left when Mrs P asked them to.

#### **4 Information and Material Considered**

- 4.1 The Real Estate Agents Authority ("the Authority") received Mrs P's complaint against XYZ on 9 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 Mrs P also provided the Committee with copies of e-mails from Mr and Mrs B who were the prospective purchasers involved in the events relating to Mrs P's complaint.
- 4.3 The Committee invited XYZ to provide a written response to the complaint. A written response was received from Mr W (Principal) on 26 May 2010. Mr W's response was supported by copies of a letter from Mrs P setting out guidelines to XYZ as to how she wished the overall sale process to proceed, file notes from Ms H, file notes from Mr D and file notes from Mr S.
- 4.4 Having received the written response from XYZ, and having received a final response from Mrs P, the matter was again considered by the Committee on 5 July 2010.
- 4.5 At that meeting, the Committee decided to explore the possibility of incorporating s87 of the Act which covers negotiation, conciliation, and mediation. The Committee was of the opinion that this could provide a venue for Mrs P and XYZ to meet and for Mrs P to be able

to voice how she was feeling and incorporate the possibility of Mrs P receiving a verbal apology alongside the written one she had already received from XYZ in a venue where she felt safe.

- 4.6 Unfortunately Mrs P did not feel able to participate in this process.
- 4.7 Having satisfied itself that it had completed its inquiry into the complaint the matter was again considered by the Committee on 16 August 2010.
- 4.8 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, that XYZ 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 XYZ during the period of 24 and 25 October 2009 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 Mrs P was initially left to deal with prospective buyers, Mr and Mrs B on her own Saturday 24 October 2009, and then, despite Ms H being informed by Mrs P that Mr and Mrs B would be returning after lunch on Sunday 25 October 2009, XYZ made no arrangements of any kind to be there that afternoon.
- 5.4 While on the balance of probabilities it can be accepted that Ms H had difficulty contacting Mrs P during the day on the Saturday, Ms H did know that that Mr and Mrs B would be returning on the Sunday, but still no arrangements were made. Mr and Mrs B had to go to the XYZ office to request that XYZ write up a contract for them to sign.
- 5.5 In regards to the behavior of Mr W, it becomes a case of which party should be received. But regardless of whether any shouting or bullying did or did not take place, it was not surprising that Mrs P was under stress given that she had very limited support over that weekend from XYZ in dealing with Mr and Mrs B until Mr and Mrs B themselves went into the XYZ office to get an agreement drawn up. The question must be asked as to why, given that Mrs P had informed Ms H that Mr and Mrs B had liked the property, were returning the next day and would most likely make an offer, XYZ did not make arrangements for Mrs P to notify them once Mr and Mrs B arrived so that an agent could go to the property.
- 5.6 It is the determination of the Committee that the service provided to Mrs P was not as good as it could have been.
- 5.7 For these reasons the Committee has determined under section 89(2)(b) of the REEA that it has been proved, on the balance of probabilities, that XYZ has engaged in unsatisfactory conduct as set out in s72(a) of the Act albeit at a lower level.

## **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 his 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](http://www.justice.govt.nz/tribunals).

Signed



**Sandy Gill**  
Chairperson  
Complaints Assessment Committee  
Real Estate Agents Authority

Date: 22 September 2010