

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

And

In the Matter of **Complaint No CA3466929**

In the Matter of **Robert Mosen**
License Number 10013050

Decision of Complaints Assessment Committee

Dated this 13th day of September 2010

Complaints Assessment Committee:

CAC10040

Chairperson: Stuart Rose

Deputy Chairperson: Rob Crozier

Panel Member: Joan Harnett-Kindley

Complaints Assessment Committee - Decision Finding Unsatisfactory Conduct

1 The Complaint

- 1.1 This complaint is from Mr. J who is the Chief Executive of XYZ.
- 1.2 The complaint is against Mr. Robert Mosen a licensee under the Real Estate Agents Act (“the Act”) of Richardsons Real Estate Limited.
- 1.3 Mr. J complains that Mr. Mosen has breached clause 6.4 of the Real Estate Agents Code of Professional Conduct and Client Care which says,
“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.”
- 1.4 Mr. J complains that Mr. Mosen in conjunction with Richardsons Real Estate Limited has advertised “the house” as being “architect designed” when the home was not in fact designed by an architect, the use of that description being restricted by the Registered Architects Act 2005.
- 1.5 The CAC, having considered the complaint, made a decision pursuant to section 79(2)(e) of the Real Estate Agents Act 2008 (the Act) to inquire into the complaint.
- 1.6 The CAC considered the response by Mr. Mosen to the complaint, and having satisfied itself that it had completed its inquiry into the complaint, conducted a hearing with regard to the complaint under section 89(1) of the Act.

2 Material Facts

- 2.1 Mr. J emailed Mr. Mosen on 15 April 2010 asking who the architect was who had designed the house. Mr. Mosen’s reply named the architect as Mr. N. Mr. N is not a registered architect.

- 2.2 Mr. J then laid a complaint about this matter with the Real Estate Agents Authority and it has been referred to this CAC to consider and determine.
- 2.3 Mr. Mosen by letter of 11 May 2010 responded to the complaint to the Authority as follows:
- 2.4 *"I replied to [Mr. J] that "the architect was [Mr. N]". I made this reply after referring to the plans for the building, which were held in the office. The plans clearly indicate the building was designed by [LMN].*
- 2.5 *Please note that [Mr. J]'s enquiry was not based around whether or not the building had been designed by a Registered Architect or not – he wanted to know, and I quote "who was the architect".*
- 2.6 *I maintain that the building was designed by an architect, and I quote Webster's Concise English Dictionary, "a person who designs buildings and supervises [their] erection".*
- 2.7 *I maintain that nowhere have I misrepresented the property and acted in good faith when placing this advertisement."*

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 that reflects adversely on the licensee's fitness to be a licensee.

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

Rule 6 Standards of professional conduct

6.2 A licensee must act in good faith and deal fairly with all parties engaged in a transaction.

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.

Section 7 of the Registered Architects Act 2005 establishes a protection that applies to the titles “registered architect” and “architect”.

Protection of titles registered architect and architect

- (1) No person, other than a registered architect, may use in connection with his or her business, trade, employment, calling, or profession—
 - (a) the title “registered architect” ; or
 - (b) any words, initials, or abbreviations of that title that are intended to cause, or that may reasonably cause, any person to believe that the person using those words, initials, or abbreviations is a registered architect.
- (2) No person who designs buildings, prepares plans and specifications for buildings, or supervises the construction of buildings may use the title “architect” unless he or she is a registered architect.
- (3) Despite subsections (1) and (2), a person may use the title “registered architect” or “architect” (or words, initials, or abbreviations of those titles), in accordance with the rules, in representing qualifications or titles awarded by overseas agencies.
- (4) A person who contravenes subsection (1) or subsection (2) commits an offence, and is liable on summary conviction to a fine not exceeding \$10,000.

4 Discussion

- 4.1 In this case the CAC is satisfied that Mr. Mosen was engaged in real estate work.
- 4.2 The CAC has fully reviewed the complaint and Mr. Mosen’s response.
- 4.3 The issue therefore is for the CAC to decide whether the conduct of Mr. Mosen amounts to unsatisfactory conduct or misconduct in terms of the REAA 2008.

- 4.4 Having received a written response from the licensee and having satisfied itself that it had completed its inquiry into the complaint, the CAC conducted a hearing with regard to the complaint under Section 89 (1) of the REAA.
- 4.5 The hearing was conducted on the papers pursuant to Section 90 of the REAA. Pursuant to Section 90 (2) the CAC made its determination on the basis of the written material before it.
- 4.6 The government has by act of parliament regulated the use of the word "architect".
- 4.7 The general public when dealing with Real Estate Agents has the right to expect that the information they present is true and accurate. There is a general perception that houses designed by architects are very well designed and of a higher than average quality, or desirability, and that these houses command a premium price in the market place because of these factors.
- 4.8 In this instance any prospective purchaser who relied on the advertisements statement that the house was architect designed would no doubt feel that they had been misled.
- 4.9 In this case Mr. Mosen's mistake was to describe the property as architect designed when it was not. The New Zealand Registered Architects Board maintains a website with the names of all registered architects and this is readily available for the public to check. The designers name in this instance is not on that list and the designer is not a registered architect. It would have been easy for Mr. Mosen to ascertain this fact.
- 4.10 Another factor considered by the CAC is that in this complaint the mistake is potentially in the agent's favour in that it could have made the property easier to sell or potentially attracted a higher price for the property than would otherwise be obtained.

5 Decision

5.1 For all the above reasons it is the decision of this Committee under Section 89(2) (b) of the Act that it has been proved, on the balance of probabilities, that Mr. Mosen has been involved in conduct that is unsatisfactory in terms of Section 72 of the Act.

5.2 Notwithstanding this finding it is the CAC's view that this conduct is at the lower end of the scale of unsatisfactory conduct and taking into account the fact that the mistake was probably a genuine one it is the decision of this CAC that we impose no further penalty or censure other than our finding.

6 Publication

6.1 The Committee directs that this decision is to be published.

7 Right of Appeal

7.1 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.

7.2 Appeal is by way of written appeal to the Tribunal. You should include a copy of this notice with your appeal.

7.3 Further information on launching your appeal is available by referring to the **Guide to Launching an Appeal** at www.justice.govt.nz/tribunals.

Signed

A handwritten signature in black ink, appearing to read 'S. Rose', written in a cursive style.

Stuart Rose

Chairperson

Complaints Assessment Committee

Real Estate Agents Authority

Date: 13 September 2010