

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

And

In the Matter of **Complaint No CA3551997**

In the Matter of **Mr T**

Decision of Complaints Assessment Committee

Dated this 30th day of August 2010

Complaints Assessment Committee:

CAC10046

Chairperson: Anne Darroch

Deputy Chairperson: Chris Rogers

Panel Member: Joan Harnett-Kindley

Complaints Assessment Committee - Decision to take no further action

1. The Complaint

- 1.1 Mr L has complained to the REAA about the conduct of Mr T of XYZ. His complaint is that he was not advised of a water leak problem.

2. Background

- 2.1 Mr L purchased a property at “the property” in December 2009. After he moved in he found that an underground water pipe was broken. Mr S, the owner of “adjoining property”, told him that the previous owner and the real estate agent knew about the problem. Mr S told him that he had advised a real estate agent setting up open home signs at the property that there was a leak and that the agent had replied that he would “follow it up.”
- 2.2 Mr S wrote to Mr K, the branch manager of XYZ, stating that he believed the person he met to be Mr W.

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 for which the licensee has been convicted, being an offence that reflects adversely on the licensee’s fitness to be a licensee.

Section 4 Interpretation

Licensee means an agent, a branch manager, or salesperson.

Section 80 Decision to take no action on complaint

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(2) Despite anything in subsection (1), the Committee may, in its discretion, decide not to take any further action on a complaint if, in the course of the investigation of the complaint, it appears to the Committee that, having regard to all the circumstances of the case, any further action is unnecessary or inappropriate.

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

Rule 5 Standards of professional competence

5.1 A licensee must exercise skill, care, competence and diligence at all times when carrying out real estate agency work.

Rule 6 Standards of professional conduct

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.

6.5 A licensee is not required to discover hidden or underlying defects in land but must disclose known defects to a customer.

4. Discussion

4.1 At the request of the Committee, the Compliance Unit undertook an investigation into the complaint. The Committee considers the following to be key points of that investigation:

4.1.1 Mr S originally thought the person he had spoken to was Mr W. He later stated that he was unable to put a name to the agent, he didn't remember whether it was Mr W or not. He had only seen this agent once, he described him as an Asian male, not particularly tall, thickset, with dark hair. He was certain that the man was putting up a XYZ sign.

4.1.2 Mr W's evidence was that he had never been to "the property" and that he had not spoken to the neighbour.

4.1.3 Mr T's evidence was that the vendor had never disclosed to him at any time during the marketing of the property that the underground water pipe was broken. He also stated that he was not informed of the water leak issue by anyone in the neighbourhood. He had never met or spoken to the neighbor.

4.1.4 Mr L's evidence was that his neighbor had told him that he had spoken to one of the agents but wasn't sure which one because he only met him once and never saw him again.

5. Decision

- 5.1 The Committee has considered all the evidence presented. However, it is clear that the identity of the person spoken to by Mr S has not been established. There is no evidence to support a conclusion that Mr T was aware of the water leak issue. Given this, the Committee has decided to exercise the discretion provided by section 80(2) of the Real Estate Agents Act 2008 to take no further action on this complaint.

6. Publication

- 6.1 The Committee directs that this decision is to be published in the interests of ensuring the disciplinary process remains transparent, independent and effective.
- 6.2 The complainant, the licensee, any other named individual are not to be identified in the published decision.

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 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



Anne Darroch
Chairperson
Complaints Assessment Committee
Real Estate Agents Authority

Date: 30 August 2010