

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

And

In the Matter of **Complaint No: CA3553446**

In the Matter of **Ross Cooper Real Estate Limited**  
**Licence Number: 10017180**

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## Decision of Complaints Assessment Committee

Dated this 15<sup>th</sup> day of April 2011

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**Complaints Assessment Committee:**

**CAC10043**

**Chairperson: Deirdre McNabb**

**Deputy Chairperson: Sue Matchaere-Patten**

**Panel Member: Barrie Barnes**

# Complaints Assessment Committee

## Decision on Orders

### **1. Background**

- 1.1 On the 9 February 2011 this Complaints Assessment Committee (Committee) found that Ross Cooper Real Estate Limited (the Licensee) had been guilty of unsatisfactory conduct in relation to the marketing for sale of the property in Rotorua.
- 1.2 Since this finding was made both the Licensee and Ms M (the Complainant) have made submissions regarding the appropriate penalty to be applied following that finding.

### **2. Relevant Provisions**

- 2.1 Having made a finding of unsatisfactory conduct against the Licensee the Committee must now decide what orders, if any, should be made under section 93 of the Real Estate Agents Act (the Act).

Section 93 provides:

93 Power of Committee to make orders

- (1) If a Committee makes a determination under section 89(2)(b), the Committee may do 1 or more of the following:
- (a) make an order censuring or reprimanding the licensee:
  - (b) order that all or some of the terms of an agreed settlement between the licensee and the complainant are to have effect, by consent, as all or part of a final determination of the complaint:
  - (c) order that the licensee apologise to the complainant:
  - (d) order that the licensee undergo training or education:
  - (e) order the licensee to reduce, cancel, or refund fees charged for work where that work is the subject of the complaint:
  - (f) order the licensee—
    - (i) to rectify, at his or her or its own expense, any error or omission; or

- (ii) where it is not practicable to rectify the error or omission, to take steps to provide, at his or her or its own expense, relief, in whole or in part, from the consequences of the error or omission:
  - (g) order the licensee to pay to the Authority a fine not exceeding \$10,000 in the case of an individual or \$20,000 in the case of a company:
  - (h) order the licensee, or the agent for whom the person complained about works, to make his or her business available for inspection or take advice in relation to management from persons specified in the order:
  - (i) order the licensee to pay the complainant any costs or expenses incurred in respect of the inquiry, investigation, or hearing by the Committee.
- (2) An order under this section may be made on and subject to any terms and conditions that the Committee thinks fit.

### **3. Discussion**

3.1 Since the finding was made the Licensee has submitted that:

- The Complainant's strategy of making an offer on the property well below the Buyer Enquiry Over (BEO) price indication created an agitated relationship between the parties and so a sale at the price of \$300,000 (the highest sum that the Complainant offered) never eventuated. It is submitted that this negotiating strategy had a negative impact on the potential to reach agreement.
- The Complainant was advised that the vendor's price expectation was significantly higher than that which the Complainant proposed to offer and that offering well below the buyer enquiry indication was likely to have a negative impact on the attitude of the vendor. It is submitted that the Complainant chose to proceed with this strategy anyway.
- By providing for a BEO\$295,000 when the vendor would not accept less than \$300,000 they did not believe that such marketing was misleading and that this would be an understood outcome in the marketplace.
- This is a strategy for marketing that is sometimes used in the market place and that guidance from the Commerce Commission indicates that, as long as it is not misleading as to price, it would not be misleading to market a property in this manner. It is submitted that it was not misleading to market the property the way that this was marketed.

3.2 The Complainant has submitted that:

- She had been looking for a house since November 2009 and had viewed over 50 houses before identifying this one at the price she wanted to pay. She noted that she found the process very stressful and that when the deal did not eventuate she was extremely frustrated and disappointed.
- She believes that the \$300,000 offer should have been accepted by the Vendors so that she could purchase the property. She also submits that, as the sale did not go ahead she had to continue renting whilst looking for a suitable home which took until June 3rd. She notes further that, when she did find another home of the same standard she had to pay \$317,000 for it. She saw the effect of losing the deal through the Licensee as costing her in excess of \$18,000.

3.3 The Committee considered the submissions of each of the parties and noted the following:

- That the Complainant was told that her initial offer of \$270,000 was too low and likely to meet with a negative response but she chose to pursue it anyway.
- That the suggested difference of \$18,000 between the sum the Complainant paid for her new home and the one that is the subject of the complaint is not an appropriate means of measuring any loss suffered by the Complainant because the prices relate to two different properties.
- That if the vendor has made it quite clear to the Licensee (as was the case in the present circumstances) that no sale price less than \$300,000 would be accepted then it is misleading to market the property for sale at BEO \$295,000.

3.4 Any representation that the property was on the market for sale at anything less than the minimum that the vendor was prepared to accept was misleading. Such a representation is not an honest representation of the vendor's price expectations.

## **4. Decision**

4.1 The Committee made the following orders:

- That the Licensee is reprimanded for marketing a property at a "Buyer Enquiry Over" price lower than the price that the vendor had indicated was his minimum sale price for the property (section 93(1)(a)) on the basis that such marketing is misleading as to price; and

- That the Licensee shall apologise to the Complainant for the unsatisfactory conduct noted in the decision of this Committee, and this apology to be in writing within 10 working days of this decision (section 93(1)(c)). A copy of the apology should also be forwarded to the Real Estate Agents Authority (the Authority) within the time stipulated.

## **5. Publication**

- 5.1 One of the Committee's functions pursuant to section 78(h) of the Act is to publish its decisions.
- 5.2 Publication gives effect the purpose of the Real Estate Agents Act of ensuring that the disciplinary process remains transparent, independent and effective. The Committee also regards publication of this decision as desirable for the purposes of setting standards and that it is in the public interest that the decision be published.
- 5.3 The Committee directs publication of its decision, but omitting the names and identifying details of the complainant (including the address of the property), and any third parties in the publication of its decision.
- 5.4 The Authority will publish the Committee's decision after the appeal period has ended. Any application for an order preventing publication must be made to the Real Estate Agents Disciplinary Tribunal (the Tribunal).

## **6. Right of Appeal**

- 6.1 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.
- 6.2 Appeal is by way of written notice to the Tribunal. You should include a copy of this Notice with your Appeal.
- 6.3 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

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke.

**Deirdre McNabb**  
Chairperson  
Complaints Assessment Committee  
Real Estate Agents Authority  
Date: 15 April 2011