

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

And

In the Matter of **Complaint No CA3557856**

In the Matter of **Roy Wallace**
License Nr: 10011708

Decision of Complaints Assessment Committee

Dated this 13th day of October 2010

Complaints Assessment Committee:

CAC10046

Chairperson: Anne Darroch

Deputy Chairperson: Chris Rogers

Panel Member: Joan Harnett-Kindley

Complaints Assessment Committee – Decision finding unsatisfactory conduct

1. The Complaint

1.1 Ms B has complained to the REAA about the conduct of Roy Wallace. At the time of the conduct complained of, Mr Wallace was working for Jireh Realty Limited trading as Ray White Parnell. He is currently working for NZ Properties International Limited.

1.2 Ms B's complaint was as follows:

"I have attached a written summary of the unprofessional service I received from two Ray White agents. As Mr J is dealing with serious health issues I don't wish to take any further action against him. My main complaint is that Roy Wallace gave me totally false information regarding the body corp fees which resulted in me having to find a considerable amount of extra money at an extremely stressful time. This has also impacted on my budget for future years. I believe it was his job to provide me with the correct information and his negligence has cost me a lot of extra money that I believe I should be compensated for."

1.3 The complaint was received on 28 April 2010.

2. Background

2.1. On 19 November 2009, Ms B telephoned Mr Wallace to make arrangements to view an apartment at "the property". She viewed the apartment on 22 November 2009. During that viewing she asked about the Body Corporate fees. Mr Wallace made a telephone call and then signed a document confirming that they were between \$1400 and \$1600 per annum.

2.2 Negotiations for the apartment commenced but eventually failed and on 26 November 2009 Ms B withdrew her offer and asked for her deposit cheque to be returned. She stated this did not occur and eventually she canceled the cheque.

2.3 In December Ms B contacted the branch manager of Ray White Parnell to advise that she was still interested in purchasing the apartment, but that she was not prepared to deal with Mr Wallace. Mr J later contacted her and on 18 December 2009 a contract was entered into for the purchase of the apartment. Ms B's evidence was that she stipulated that her deposit

cheque was not to be released to the vendor as she was aware that he was in financial difficulty.

- 2.4 On 22 December 2009 Ms B inquired if the tenants had been given notice. She stated that Mr J affirmed that this had occurred.
- 2.5 At the beginning of February Ms B raised her concern that the tenants were still occupying the apartment. She was advised by Mr J that the tenants had departed. She stated that she was then informed by “Shantelle” that the tenants were not moving out until 15 March 2009.
- 2.6 On 8 February 2009 Ms B met with her lawyer and noticed that the settlement statement recorded the Body Corporate fees as \$3156.20.
- 2.7 Ms B’s evidence was that she later discovered that the Body Corporate fees for the apartment in 2009 were \$3003.98. She also stated that despite the fact that her lawyer did not sign a release form for the deposit to be given to the vendor, it was released from Ray White’s trust account.

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 89 Power of Committee to determine complaint or allegation

(1) A Committee may make one or more of the determinations described in subsection (2) after both inquiring into a complaint or allegation and conducting a hearing with regard to that complaint or allegation.

(2) The determinations that a Committee may make are as follows:

- (b) a determination that it has been proved, on the balance of probabilities, that the licensee has engaged in unsatisfactory conduct.

(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

6.2 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.

4. Assessment of complaints

4.1 The Committee has determined these complaints by a hearing on the papers, in accordance with section 90(1) of the Real Estate Agents Act 2008.

5. Discussion

5.1 Ms B included in her complaint that she did not wish to deal with the issues relating to Mr J. Therefore the Committee has restricted its consideration to the events relating to Mr Wallace.

5.2 Mr Wallace has been interviewed by a REAA investigator in relation to this complaint. With respect to the issue of the Body Corporate fee, he stated:

“I confirm that this is the document written by Ms B after the conversation and it is my signature on the bottom. Obviously I know now that that figure is not right. It’s double that amount I think. Well I got it confirmed from Mr J and Mr J got it from the vendor. I can’t do any more than that. I wouldn’t sign this right there and after talking to Mr J if there had been another figure would I? I’m sure that I asked him twice and maybe three times because I thought that figure was low.....”

5.3 In the Committee’s view, in advising the Body Corporate fees Mr Wallace should not have relied on other persons. He owed a duty of care to the intending purchaser to provide the correct information knowing it was a financial consideration in her purchase. He admits that he thought the figure was low. This should have alerted him to take further steps and make further investigation to personally ascertain the correct body corporate fees. This would have been the prudent way to resolve the matter. He could have obtained the information from the vendor’s solicitor or the Body Corporate secretary. In the Committee’s view his failure to do so fell short of the standard that a reasonable member of the public is entitled to expect from a reasonably competent licensee. It also would reasonably be regarded by agents of good standing as unacceptable.

6. Decision

6.1 As a result of the above the Committee finds that on the balance of probabilities Mr Wallace is guilty of unsatisfactory conduct under sections 72(a) and 72(d) of the Real Estate Agents Act 2008.

7. Penalty

- 7.1 Having determined under Section 89 (2) (b) of the Real Estate Agents Act 2008 ("the Act") that it has been proved to the required standard that Mr Wallace has engaged in unsatisfactory conduct, the Committee has the power by virtue of Section 93 of the Act to make an order in the nature of a penalty against Mr Wallace.
- 7.2 Before it determines whether to make any orders available under Section 93, the Complaints Assessment Committee invites Mr Wallace to make any submissions he may wish on the issue of penalty. The complainant will also be invited to make any submission she wishes in regards to penalty. Any submissions must be made to the Committee within 7 days from the date of this determination.

8. Right of Appeal

- 8.1 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.
- 8.2 The Committee has yet to finally determine this complaint because the parties are being given an opportunity to make submissions on orders before the Committee determines what orders should be made, if any.
- 8.3 The Committee considers that the 20 working day appeal period does not commence until it has finally determined this complaint by deciding what orders should be made, if any.

Signed



A Darroch
Chairperson
Complaints Assessment Committee
Real Estate Agents Authority

Date: 13 October 2010