

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

In the Matter of **Complaint No: CA3557856**

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

Decision of Complaints Assessment Committee

Dated this 13th day of December 2010

Complaints Assessment Committee:

CAC10046

Deputy Chairperson: Chris Rogers

Panel Member: Joan Harnett-Kindley

Complaints Assessment Committee

Decision on Orders

1. Introduction

- 1.1 By its decision dated 13 October 2010, the Complaints Assessment Committee (the Committee) made a determination under Section 89(2)(b) of the Real Estate Agents Act 2008 (“the Act”) that the licensee Roy Wallace had engaged in unsatisfactory conduct as that term is described in Section 72 of the Act.
- 1.2 Having made a determination under Section 89(2)(b) the Committee may make one or more of the orders set out in Section 93 of the Act.
- 1.3 The Committee invited Roy Wallace and the complainant to make any comments or submissions in relation to penalty. The complainant, Ms B provided a written submission dated 16 October 2010. Roy Wallace provided a written submission on 28 October 2010.

2. Relevant Provisions

- 2.1 Having made a finding of unsatisfactory conduct against Roy Wallace, the Committee must now decide on what orders, if any, should be made under Section 93 of 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. Complainant's Submission

- 3.1. The complainant maintains that in order to purchase the property she had to budget very closely.
- 3.2. The difference between the amount quoted by licensee Roy Wallace and the actual amount the complainant was invoiced by the body corporate in the first year was \$1556.20.
- 3.3. The complainant is seeking compensation for the body corporate fees she is now required to pay on an annual basis over and above the original figure quoted to her by licensee Roy Wallace.

4. Respondent's Submission

- 4.1. Licensee Roy Wallace maintains that he was handling the enquiry for the property as a favour for Mr J, the listing licensee, because Mr J was suffering from a debilitating illness at the time and was unable to attend viewings.
- 4.2. Roy Wallace maintains that advice on the level of body corporate fees payable was received from Mr J at the time the complainant viewed the property and that the range of \$1400 to \$1600 per annum was supplied to both himself and the complainant by Mr J.
- 4.3. Roy Wallace maintains that he gave the same body corporate figures to another party who subsequently purchased an apartment in the same complex through Mr J and that that party considered the error to be inconsequential.
- 4.4. Roy Wallace believes that the complainant would in all likelihood have rechecked the body corporate figures with Mr J when she proceeded to purchase the property through Mr J in January 2010.
- 4.5. Licensee Roy Wallace believed he was passing on correct information to the complainant at the time because he maintains the information came directly from Mr J who was the only licensee having direct contact with the vendors of the property.

5. Discussion

- 5.1. The Committee is satisfied that licensee Roy Wallace passed on information to the complainant that was incorrect.
- 5.3. Roy Wallace maintains that Mr J was the only licensee able to contact the vendor and therefore he was obliged to accept information passed to him by Mr J as being correct.
- 5.4. It is the Committee's view that even if this assertion were correct, there were other avenues open to Roy Wallace in order to ascertain the correct information when by his own admission he felt the figure he was quoting Ms B was low.
- 5.5. Mr J is now deceased and unable to confirm or deny any advice attributed to him.

6. Decision

6.1 Pursuant to Section 93 of the Real Estate Agents Act 2008, CAC10046 orders:

That licensee Roy Wallace make a payment of \$1556 to the complainant pursuant to Section 93(1)(f)(ii), for relief in part from the consequences of the error. Payment is to be made within 20 working days of this decision. Proof of payment is to be provided to the Real Estate Agents Authority.

7. Publication

7.1 The Committee directs that its decision is to be published.

7.2 The Committee directs publication of its decision by omitting the names and identifying details of the complainant (including the address of the property) and any third parties named in the decision.

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 within 20 working days after the date of this notice.

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

8.3 Further information on lodging an appeal is available by referring to the Guide to Lodging an Appeal at www.justice.govt.nz/tribunals.

Signed



C Rogers
Deputy Chairperson
Complaints Assessment Committee
Real Estate Agents Authority

Date: 13th December 2010