

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

And

In the Matter of **Complaint No CA3575577**

In the Matter of **Richard Lancaster**
License No: 10001597

Decision of Complaints Assessment Committee

Dated this 18th day of November 2010

Complaints Assessment Committee:

CAC10048

Chairperson: Debbie Van Zyl

Deputy Chairperson: Rob Crozier

Panel Member: Denise Bovaird

DETERMINATION OF COMPLAINTS ASSESSMENT COMMITTEE (PENALTY)

1. Introduction

- 1.1 By its decision dated 16 September 2010 the Complaints Assessment Committee made a determination under section 89(2)(b) of the Real Estate Agents Act 2008 ("the REAA"/"the Act") that the Licensee, Richard Lancaster, of Elysium Realty Limited (trading as Harveys), has engaged in unsatisfactory conduct as that term is defined 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 Complaints Assessment Committee invited Mr. Lancaster and Ms. G to make any comments or submissions they wished within ten days from the date of the Committee's determination.
- 1.4 Ms. G provided an emailed submission in which she stated that she was glad that Mr Lancaster was found guilty of unsatisfactory conduct, as he had caused her financial stress. Ms. G further stated that she will leave it to the Committee to decide on the penalty, but that she would be happy if Mr Lancaster was suspended as a real estate agent for a few years.
- 1.5 Mr. Lancaster did not submit a submission, but he provided a comment by email that he had no malice or intention in his actions and that he was hopeful that any punishment decided on would be fair.

2. Principles considered

- 2.1 The Committee, when determining whether or not to make an order under section 93(1), has also had regard to the functions which the imposition of a penalty usually must serve in professional disciplinary proceedings. They include:
 - a. Promoting and protecting the interests of consumers and the public generally
Section 3(1) of the REAA sets out the purpose of the legislation. The principal purpose of the Act is "to promote and protect the interests of consumers in respect of transactions that relate to real estate and to promote public confidence in the performance of real estate agency work." One of the ways in which the Act states it achieves this purpose is by providing accountability through an independent,

transparent and effective disciplinary process (section 3 (2)).

b. Maintenance of professional standards

This function has been recognised in professional disciplinary proceedings involving other professions (for example, in medical disciplinary proceedings; *Taylor v The General Medical Council* [1990] 2 All ER 263; and in disciplinary proceedings involving valuers; *Dentice v The Valuers Registration Board* [1992] 1 NZLR 720). In the Committee's view this function is also applicable in the disciplinary processes under the REAA.

c. Punishment

The Committee accepts that a penalty in a professional disciplinary case is primarily about the maintenance of standards and the protection of the public. However in the Committee's view there is also an element of punishment - indicated by the power the Committee has to impose a fine (section 93(l)(g); or make an order of censure (section 93(l)(a)). The element of punishment has been discussed in the context of other professional disciplinary proceedings (see *Patel v Dentists Disciplinary Tribunal* (High Court, Auckland, CIV 2007-404-1818 Lang J 13 August 2007, where the Court said that disciplinary proceedings inevitably involve issues of deterrence, and penalties are designed in part to deter both the offender and others in the profession from offending in a like manner in the future.)

d. Where appropriate, rehabilitation of the professional must be considered

The Committee regards its power to make an order requiring a licensee to undergo training or education as indicative of this function applying in the context of professional disciplinary processes under the REAA.

2.2 The Committee acknowledges that when making an order under section 93, the order/s made must be proportionate to the offending and to the range of available orders.

3. Complaints Assessment Committee Determination under section 93

3.1 Mr Lancaster engaged in unsatisfactory conduct in that he breached section 136(1) of the Act and Rules 6.2, 6.3, 6.4 and 6.5 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009 by not disclosing his involvement as being one of the directors of the vendor company for the property involved in this case.

3.2 Ms. G was therefore denied the opportunity to obtain the information and to ask the

pertinent questions about the property that she could have asked if she knew he was one of the directors of the vendor company.

- 3.3 Although Ms. G might have suffered a loss due to the costs of the eventual repairs needed, the Committee is satisfied that she had the opportunity to get advice and to complete her due diligence inspections before she made an offer on the property.
- 3.4 Having regard to the facts of this case as outlined in the Committee's determination dated 16 September 2010, and the established unsatisfactory conduct and functions which the imposing of a penalty is designed to serve, the Committee has determined to make the following orders under section 93(1):
 - 3.4.1 The Committee is censuring Mr Lancaster;
 - 3.4.2 Mr Lancaster is to pay to the Real Estate Agents Authority ("the Authority") a fine of \$2,000.00 pursuant to section 93(1)(g). This payment must be made within 21 days of receipt of this penalty determination and proof thereof provided to the Authority;
 - 3.4.3 Mr Lancaster is to apologise to the complainant in writing. Proof of this must be provided to the Authority within 21 days of receipt of this penalty determination.
- 3.5 The Committee does not consider that it is necessary to make any of the other orders specified in section 93(1).

4 Publication

- 4.1 One of the functions of the Complaints Assessment Committee is to publish its decisions (section 78(h)). The Committee has the power under section 84(2) to direct such publications of its decisions under section 93 as it considers necessary or desirable in the public interest.
- 4.2 The Committee regards the publication function as one of the means to educate and raise industry standards by making public the nature of conduct which the Committee considers to be unsatisfactory and the consequences for licensees engaging in such conduct. Publication also gives effect to the purpose of the Act set out in section 3 by ensuring transparency in the disciplinary process.
- 4.3 The Complaints Assessment Committee considers that to ensure the principal purpose of

the Act is achieved, its decision dated 16 September 2010 and this decision ought to be published. Publication is regarded as necessary for the purposes of standard setting in this case and it is also in the public interest that the decisions be published.

- 4.4 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. Any such publication should not occur until the Authority is satisfied that Mr Lancaster has been notified of this decision as to penalty.

5 Right of Appeal

- 5.1 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.
- 5.2 Appeal is by way of written notice to the Tribunal. You should include a copy of this Notice with your Appeal.
- 5.3 Further information on lodging an appeal is available by referring to the **Guide to Lodging an Appeal** at www.justice.govt.nz/tribunals.

Signed



Debbie van Zyl
Chairperson
Complaints Assessment Committee
Real Estate Agents Authority

Date: 18 November 2010