

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

And

In the Matter of **Complaint No: CA3675279**

In the Matter of Robin David Owen  
**Licence Number:10010873**

---

## Decision of Complaints Assessment Committee

Dated this 9<sup>th</sup> day of May 2011

---

**Complaints Assessment Committee:**

**CAC10011**

**Chairperson: Deirdre McNabb**

**Deputy Chairperson: Rob Crozier**

**Panel Member: Denise Bovaird**

# Complaints Assessment Committee

## Decision on Orders

### 1. Background

- 1.1 On the 23<sup>rd</sup> day of December 2010 the Complaints Assessment Committee found the licensee (Robin) David Owen guilty of unsatisfactory conduct in terms of section 72 of the Act.

### 2. Relevant Provisions

- 2.1 Having made a finding of unsatisfactory conduct against Mr Owen the Committee must now decide what orders, if any, should be made under s 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. Discussion**

3.1 In a submission lodged by the complainant, the following penalties were sought:

- An order censuring or reprimanding the licensee; and
- An apology to the complainant and the complainant's clients, Mr and Mrs B for the unsatisfactory conduct that the CAC found.

3.2 Mr Owen also filed a submission and supporting material from third parties. That submission does not relate to the penalty but instead seeks to provide further evidence as to why Mr Owen considers he was entitled to commission on the sale. Having made a determination of unsatisfactory conduct the Committee is not required to consider this submission as the imposition of penalty is the only matter before the Committee at this time. However, the Committee has noted the submission by Mr Owen and, whilst not required to do so, notes that it does not provide information that, had it been provided earlier, would have changed the finding of unsatisfactory conduct. That submission and further information can be summarised as follows:

- A signed statement from Ms G dated 21 January 2011 stating that Mr Owen was at the property of Ms R on the afternoon of 23 May 2010 (the relevant date) and that he introduced her to Mr and Mrs B. The Committee notes that this confirms that Mr Owen and the Bs were at the property at the same time which all parties acknowledge. It does not prove that Mr Owen introduced the Bs to that property.
- A letter from Ms R (vendor of the subject property) stating that in her opinion Southern Wide (the company that employs Mr Owen) 'may have been the instigators of the sale'. She also stated that she was contacted by Mr Owen on Monday 24 May 2010 advising that he had presented her property to a couple the previous afternoon and that he expected them to make an offer soon. She states further that she told Mr Owen that another agent had contacted her to say that they had a party interested in the property. The Committee notes the statement from Ms R is opinion only. She was not present and therefore was unable to provide factual information that would identify who was present, in what circumstances on the day in question.
- A letter from Mr Z of Southern Wide Real Estate supports Mr Owen's version of events but the Committee notes that Mr Z was not present at the place

and time in question. In relation to penalty, that information from Mr Z does provide testimony as to the good character of Mr Owen.

- 3.3 The Committee notes that there are no records of previous disciplinary decisions with REINZ in respect of Mr Owen in his capacity as a licensed real estate agent prior to the enactment of the 2008 Act.
- 3.4 It noted that the submission that Mr Owen lodged with the Authority to address the penalty position in this case did not make any suggestion as to the penalty that would be appropriate. Instead it indicates that despite the unsatisfactory conduct finding Mr Owen continues to assert that he was entitled to the commission he originally sought on this sale.
- 3.5 It is clear from the submission that Mr Owen does not accept that Mr B did not ask him to show him the section in question and he does not accept that Mr B specifically took care not to have Mr Owen introduce him to that property on account of his prior commitment to an appointment to view it with the complainant.
- 3.6 The Committee noted that it was fortunate that there was no party out of pocket as a result of the conduct by Mr Owen. Nevertheless it considers it necessary for there to be a consequence for the conduct in question. The Committee considers that the following penalties are appropriate:
1. The licensee is to be reprimanded for his unsatisfactory conduct.
  2. The licensee is to provide a written apology to Ms C and Mr and Mrs B for the unsatisfactory conduct.

#### **4. Decision**

4.1 After considering all submissions the CAC orders as follows:

- That, pursuant to section 93(1)(c) of the Real Estate Agents Act 2008, Mr Owen is to apologise to Ms C and Mrs B for the unsatisfactory conduct, the wording of such apology to be submitted to the Committee for approval within 10 working days of the date of this order and then provided to Ms C and Mrs B by Mr Owen within 5 working days of approval being given by the Committee.

- That, pursuant to section 93(1)(a) Mr Owen is reprimanded regarding the unsatisfactory conduct found by the Committee

## **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.

## **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



**Deirdre McNabb**  
Chairperson  
Complaints Assessment Committee  
Real Estate Agents Authority  
Date: 9 May 2011