

In the Matter of

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

And

In the Matter of

**Complaint No. CA3676431**

In the Matter of

**Hallam Alexander Woolfrey  
Licence No. 10036809**

---

Determination of Complaints Assessment Committee

Dated this 15<sup>th</sup> day of October 2010

---

**Complaints Assessment Committee:**

**CAC No: 10053**

**Chairperson: Debbie van Zyl**

**Deputy Chairperson: Sue Matehaere Patten**

**Panel Member: Barrie Barnes**

## **Determination of Unsatisfactory Conduct**

### **1. The Complaint**

- 1.1 This is a complaint lodged by Ms A on 1 June 2010 against Hallam Alexander Woolfrey. Mr Woolfrey is a licensee under the Real Estate Agents Act 2008 (“the Act”). Mr Woolfrey holds a salesperson’s licence and works for Countrywide Real Estate Limited trading as Century 21 Countrywide Real Estate (“Century 21”).
- 1.2 Ms A’s complaint is about Mr Woolfrey’s disrespect and total lack of regard for her rights.

### **2. Material Facts**

- 2.1 Ms A is the tenant in a property situated at “the property” that was owned by her uncle and which he had listed with Century 21 to market.
- 2.2 Ms A alleges that Mr Woolfrey phoned her to arrange to come and take photos of the property. According to Ms A, Mr Woolfrey insisted that the photos had to be taken that day. According to Ms A, when she told Mr Woolfrey it did not suit her to have the photos taken that day, he insisted, and she later conceded feeling manipulated. She was in the process of redecorating the property and had to drop everything she was doing to tidy up the property before Mr Woolfrey and Ms B (another licensee working for Century 21) arrived to take the photos. Ms A alleges that Mr Woolfrey should have given her reasonable notice.
- 2.3 Ms A further alleges that Mr Woolfrey did not contact her to arrange for an open day to be held on 30 May 2010, notwithstanding the open home sign that was placed at the property earlier in the week. She alleges that prior to when the open home was due to start she closed her curtains, removed her car from the property and locked the doors to establish what Mr Woolfrey would do.
- 2.4 Ms A alleges that Mr Woolfrey, without contacting her on her mobile, eventually opened the door to the property with a key whereupon Ms A asked him to leave.
- 2.5 Ms A alleges that she would have vacated the property during the duration of the open home and made a key available to Mr Woolfrey if he bothered to contact her.

- 2.6 Ms A further alleges that Mr Woolfrey blatantly disregarded the requirements of the Residential Tenancies Act and that he did not show any respect for her or her rights.
- 2.7 Mr Woolfrey states that he understood that Ms A had agreed that open homes would be held on Sunday afternoons and that she would be out during those times to enable Century 21 to conduct the open homes.
- 2.8 Mr Woolfrey could not recall whether he contacted Ms A before the open home to be held on 30 May 2010.

### **3. Relevant Provisions**

- 3.1 A complaint can only be made in relation to alleged unsatisfactory conduct (section 72 of the Act) or alleged misconduct (section 73 of the Act).
- 3.2 Section 72 of the Act defines unsatisfactory conduct:

#### **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.

- 3.2 Section 73 of the Act defines misconduct:

#### **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.

3.3 Rule 6.3 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009 (“the Rules” or “Rule”) deals with standards of professional conduct. Rule 6.3 states: “A licensee must not engage in any conduct likely to bring the industry into disrepute.”

3.4 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.

3.5 Having satisfied itself that it had completed its inquiry into the complaint, the Complaints Assessment Committee (“the Committee”) conducted a hearing with regard to the complaint under Section 89 (1) of the Act.

3.6 The hearing was conducted on the papers pursuant to Section 90 of the Act. Pursuant to Section 90 (2) the Committee made its determination on the basis of the written material before it.

#### **4. Discussion**

4.1 Section 72 of the Act specifies the conduct that represents “unsatisfactory conduct”. Unsatisfactory conduct must relate to the carrying out of real estate agency work. Section 72(b) is implicit in that a contravention of the Act or any regulations or rules made under the Act is classified as unsatisfactory conduct. A contravention of the Rules therefore automatically amounts to unsatisfactory conduct.

4.2 The Committee understands that it is standard practice in the real estate industry for licensees to have respect for the rights of tenants living in a property they market. Especially in a case like this where a family member is a tenant, extra care would normally be taken to make sure everything is done properly.

4.3 It appears that communication between the parties was an issue. It further appears that Mr Woolfrey did not show the necessary respect and courtesy to Ms A that was warranted in the circumstances and falls short of the standard that a reasonable member of the public is entitled to expect from a reasonably competent licensee and is therefore in breach of section 72(a) of the Act.

4.4 It further appears to the Committee that on the balance of probabilities Mr Woolfrey’s conduct could bring the industry into disrepute which is a breach of Rule 6.3.

4.5 For the reasons set out above, Ms A's allegations against Hallam Woolfrey has met the test for unsatisfactory conduct, but even taking the view most favourable to the complainant, the Complaints Assessment Committee has decided that that there are no reasonable grounds for concluding that Mr Woolfrey's conduct complained about reaches the threshold for misconduct (section 73(a)).

## 5. Decision

5.1 The Complaints Assessment Committee met on 17 September 2010 to consider the complaint against Hallam Woolfrey. The Complaints Assessment Committee has determined under section 89(2)(b) of the Act that it has been proven on the balance of probabilities that Mr Woolfrey has engaged in unsatisfactory conduct.

5.2 Having determined that Mr Woolfrey is guilty of unsatisfactory conduct, the Complaints Assessment Committee has the power to make one of the orders set out in section 93(1) of the Act.

## 6. Orders

6.1 Having made a determination under section 89(2)(b) of the Act, the Committee may make one or more orders set out in section 93 of the Act.

6.2 In this instance the Committee did not invite either Mr Woolfrey or Ms A to make any comments or submissions before making an order, as the Committee felt that it had all the information needed to make an order.

### 6.3 Principles considered

6.3.1 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 discipline 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(1)(g); or make an order of censure (section 93(1)(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.

6.3.2 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.

6.4 Having regard to the facts of this case as summarised above, the established unsatisfactory

conduct and the above principles, the Committee has determined to make an order under section 93(1)(c) that Mr Woolfrey must apologise to Ms A for his actions and further that Mr Woolfrey must furnish proof of receipt of such apology by Ms A to the Committee within 15 working days from the date of this decision.

- 6.5 The Committee does not consider that it is necessary to make any of the other orders specified in section 93(1).

## **7. Publication**

- 7.1 One of the Committee's functions pursuant to section 78(h) of the Act is to publish its decisions.

- 7.2 Publication gives effect the purpose of the REAA 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.

- 7.3 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.

## **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 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](http://www.justice.govt.nz/tribunals).

Signed

A handwritten signature in blue ink, appearing to be 'Debbie van Zyl', written in a cursive style.

Debbie van Zyl

Chairperson

Complaints Assessment Committee

Real Estate Agents Authority

Date: 15 October 2010