

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

And

In the Matter of **Complaint No: CA3766998**

In the Matter of Latoya McDonald  
**License Number: 10010432**

---

## Decision of Complaints Assessment Committee

Dated this 23<sup>rd</sup> day of May 2011

---

**Complaints Assessment Committee:**

**CAC10048**

**Chairperson: Debbie van Zyl**

**Deputy Chairperson: Rob Crozier (not participating)**

**Panel Member: Denise Bovaird**

# Complaints Assessment Committee

## Decision on Orders

### **1. Background**

- 1.1. On 28 March 2011 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, Latoya McDonald (the Licensee), of Next Step Realty Limited (trading under the Ray White franchise), was guilty of unsatisfactory conduct as that term is defined in section 72 of the Act.
- 1.2. The Committee invited both the Complainants and the Licensee to make any comments or submissions they wished within 10 days from the date of the Committee's determination.
- 1.3. No submission was received from the Licensee.
- 1.4. The Complainants sent their submission in the form of an email to the Investigator noting their disappointment at the situation. They stated that they considered the site to be a rare find and according to their calculations they missed the opportunity to realise a profit of in excess of \$100,000. They further stated that their expectation would be a fine of \$20,000.

### **2. Relevant Provisions**

- 2.1. Having made a finding of unsatisfactory conduct against the Licensee, the Committee must now decide what orders, if any, should be made under section 93 of the Act.
- 2.2. 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**

#### Principles considered

- 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:

##### 3.1.1. Promoting and protecting the interests of consumers and the public generally

Section 3(1) of the Act 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)).

### 3.1.2. 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 Act.

### 3.1.3. 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.)

### 3.1.4. 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 Act.

- 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.
- 3.3. The Licensee engaged in unsatisfactory conduct in that she breached Rules 6.2 and 6.3 when she did not ensure that Mr L2 (and therefore the complainants) knew about the multi-offer situation. She further proceeded to present the offers to the vendor without the manager being present and when she realised that the complainants' offer did not contain a multi-offer clause, she carried on with the presentation instead of halting it. The Committee further found that the Licensee acted unprofessionally when she requested Mr L2 to leave his clients' offer under the bin outside her office.

## **4. Decision**

4.1. Having regard to the facts of this case as in the Committee's determination dated 28 March 2011, the complainants' submission and the established unsatisfactory conduct as well as the functions which the imposing of a penalty is designed to serve, the Committee has determined to make the following order under section 93(1):

4.1.1. The Committee is censuring the Licensee;

4.1.2. Pursuant to section 93(1)(g) the Committee is ordering the Licensee to pay to the Authority a fine of \$2,000 within 10 working days from date of this decision.

## **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.

5.4. The Authority will publish the Committee's decision after the appeal period has ended. Any application for an order preventing publication must be made to the Disciplinary Tribunal.

## **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

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: 23 May 2011