

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

And

In the Matter of **Complaint No: CA3806823**

In the Matter of **Grahame Carey**
License Number: 10002115

Decision of Complaints Assessment Committee

Dated this 19th day of October 2010

Complaints Assessment Committee:

CAC10055

Chairperson: Marina Neylon

Deputy Chairperson: Jo Hughson

Panel Member: David Russell

Complaints Assessment Committee – Decision on Orders

Background

The Complaints Assessment Committee (the Committee) met on 16th September 2010 to consider the complaint against Grahame Carey by Mr Z. The Committee has determined under section 89(2)(b) of the Real Estate Agents Act 2008 that it has been proven on the balance of probabilities that Mr Carey has engaged in unsatisfactory conduct.

Relevant Provisions

Having made a finding of unsatisfactory conduct against Grahame Carey, 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.

Discussion

Mr Z has submitted (via his daughter Ms Z), that the full cost of repairing the leaks in his property should be borne by Mr Carey. The full cost of repairs has been estimated at \$12,000, and whilst the Committee believes that the Licensee has breached his duty of care to the customer, there are mitigating factors. Of particular importance in the Committee's deliberations was the fact that the Licensee did potentially safeguard the complainant against any issue relating to leakage by including a building inspection clause in the sale and purchase agreement. An inspection by a specialist should have found the issue and brought it to the complainant's attention. The fact that this specialist did not identify the issue has impacted the weight of responsibility on the Licensee considerably.

Added to this is Mr Carey's submission that he never intentionally deceived the complainant. Mr Carey says that there were language issues which made clear communication more difficult and that he has made every effort to resolve the dispute, including paying \$600 for a diagnostic report. Mr Carey also notes that the quotation supplied to rectify the problem is too high and that the complainant is aware of the true cost to fix the problems.

Decision

The Committee has carefully considered the appropriate order for this matter and has decided the following:

1. That a written apology be made by Grahame Carey to Mr Z and his family for failing to clearly pass on information that was known to Mr Carey concerning the property within 21 working days from date of this determination. Mr Cary to provide the Authority with a copy of the apology.

2. That Grahame Carey contributes \$2000 toward the cost of repairs to the property forthwith within 21 working days from date of this determination. Mr Carey has to provide the Authority with proof of such payment. Payment is to be made to the complainant directly and not to the Authority.
3. The licensee Grahame Carey is hereby censured for unsatisfactory conduct.

Publication

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.

Right of Appeal

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.

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

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

Signed



Marina Neylon
Chairperson
Complaints Assessment Committee
Real Estate Agents Authority

Date: 19 October 2010