

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

And

In the Matter of **Complaint No: CA3813771**

In the Matter of **Maryke van Iersel**  
**Licence Number: 10009609**

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## Decision of Complaints Assessment Committee

Dated this 7<sup>th</sup> day of February 2011

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**Complaints Assessment Committee:**

**CAC10054**

**Chairperson: Chris Rogers**

**Deputy Chairperson: Deirdre McNabb**

**Panel Member: Joan Harnett-Kindley**

# Complaints Assessment Committee

## Decision on Orders

### 1. Background

- 1.1 On 23<sup>rd</sup> November 2010 the Complaints Assessment Committee (the Committee) determined under section 89 (2) (b) of the Real Estate Agents Act 2008 (the Act) that it had been proved, on the balance of probabilities, that the licensee, Maryke van Iersel, had engaged in unsatisfactory conduct in terms of section 72 (a) and 72 (b) of the Act and that Maryke van Iersel engaged in unsatisfactory conduct in terms of section 72 (b) by contravening rule 6.4 of the REAA Rules 2009.
- 1.2 Parties to the complaint were given the opportunity to make submissions to the committee on orders.
- 1.3 The Committee received and considered submissions on behalf of licensee Maryke van Iersel and complainant Ms T.

### 2. Relevant Provisions

- 2.1 Having made a finding of unsatisfactory conduct against Maryke van Iersel 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 The Committee received a submission on orders on behalf of Ms T (the Complainant) which in summary asks for -

- (i) An apology from licensee Maryke van Iersel.
- (ii) Compensation for losses incurred as a result of an error by Maryke van Iersel –
  - \$2,436.16 - in penalty interest for late settlement
  - \$1,800.00 - for vendors costs in relation to the late settlement
  - \$516.21 - expended on independent legal counsel
  - \$450 - valuation fee
  - \$4,826.81 - additional legal costs
  - \$38,000 - loss of property value
- (iii) An order of censure or reprimand recorded against the licensee.

3.2 The Committee is also in receipt of a submission on orders on behalf of Maryke van Iersel (the licensee) which in summary proposes:

- (i) An apology from Maryke van Iersel to Ms T.
- (ii) The completion of industry training courses already begun by the licensee on misrepresentation and law of contract and agency.
- (iii) No award for compensation due the absence of loss to the complainant being evident.

3.3 The Committee has carefully considered the submissions on behalf of both parties

along with the stated objectives of the Real Estate Agents Act 2008 –

*‘The purpose of this 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.’*

together with the Professional Conduct and Client Care Rules required by section 14 of the Real Estate Agents Act 2008,

*‘ These practice rules set out the standard of conduct and client care that agents, branch managers or salespersons (collectively referred to as licensees) are required to meet when carrying out real estate agency work and dealing with clients.’*

- 3.4 The Committee wishes to clarify its position on some of the relief sought by the complainant.
- 3.5 No credit is awarded for penalty interest on the basis that the complainant was obliged to settle and made the choice to delay settlement therefore incurring this cost.
- 3.6 No credit is awarded for the vendor’s solicitors costs incurred in relation to the delayed settlement because the complainant chose to delay settlement.
- 3.7 No credit is awarded for the valuation fee. The valuation was not an element of any settlement issues but rather the complainant was advised to commission a valuation report in order to sustain a damages claim for loss of value which is not proven by the report in any event.
- 3.8 No credit has been awarded for loss in value of the property at 5 Marama Avenue Waiheke because of the presence of the cell phone antenna, on the basis of insufficient evidence.
- 3.9 During the course of the investigation into this complaint the Committee has been provided with copies of an extended general study on the impact of cell phone sites on property values and two specific valuations carried out on the subject property and commissioned by both parties to the complaint subsequent to the sale.

3.10 On analysis of the material the Committee finds insufficient evidence of loss of value. The general study cannot be applied to this investigation and of the two independent valuation reports one indicates no perceived change in value and the other makes vague reference to a possible reduction in value but goes on to say that this reduced price may already have been taken account of in the purchase price.

#### **4. Decision**

4.1 The Committee finds as follows:

- (i) Licensee Maryke van Iersel will provide an apology in writing to Ms T. The licensee will forward a copy of the apology to the Authority within 20 working days of this decision being delivered to the licensee, s93 (1)(c) of the Act.
  
- (ii) Licensee Maryke van Iersel will provide to the Real Estate Authority evidence of the completion of training courses conducted by an industry training provider on
  - a. Demonstrating Knowledge of Misleading and Deceptive Conduct and Misrepresentation and;
  - b. Law of Contract and Law of Agency.

The courses are to be completed within the next 12 calendar months and written evidence of completion provided to the Authority within 20 working days of completion, s93 (1)(d) of the Act.

- (iii) The licensee shall pay to the complainant the amount of \$5343.00 as relief for costs incurred by the complainant - namely unanticipated additional legal costs and independent counsel advice. Evidence of payment is to be provided to the Authority within 20 working days of this decision being delivered to the licensee, s93 of the Act.

#### **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



**Chris Rogers**  
Chairperson  
Complaints Assessment Committee  
Real Estate Agents Authority  
Date: 7 February 2011