

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

And

In the Matter of **Complaint No: CA3818694**

In the Matter of **Shalery Raynes**
Licence Number: 10005550

Decision of Complaints Assessment Committee

Dated this 10th day of March 2011

Complaints Assessment Committee:

CAC10057

Chairperson: Anna Tierney

Deputy Chairperson: Joan Harnett-Kindley

Panel Member: Deirdre McNabb

Complaints Assessment Committee

Decision on Orders

1. Background

- 1.1 By its decision dated 15 November 2010, 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 Shalery Raynes had engaged in unsatisfactory conduct, in that she breached Rule 9.1 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009 and contravened a rule made under the Act within the meaning of Section 72(b) of the Act.
- 1.2 Having made a determination under Section 89(2)(b) the Committee may make one or more of the orders set out in Section 93 of the Act.
- 1.3 The Committee invited the complainant and Shalery Raynes to make any comments or submissions in relation to penalty. The complainants, Mr and Mrs B provided two submissions via email on 24 November 2010 and 25 November 2010. A joint written submission was provided on 22 November 2010 by Shalery Raynes and Graeme Storie.

2. Relevant Provisions

- 2.1 Having made a finding of unsatisfactory conduct against Shalery Raynes, the Committee must now decide what orders, if any, should be made under s 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. Complainant's Submission

- 3.1 In their first submission, the Bs state that they understand that both Shalery Raynes and Graeme Storie are working with Ray Whites again [they stated in their original complaint that they were advised by the Licensees' Principal, Mr S that he had "sacked the two licensees over the incident"].
- 3.2 The Bs state that they do not want others to be mishandled by these licensees and have requested that the Authority stop them practicing.
- 3.3 In their second submission the Bs reiterate their initial request submitted with their complaint for "full compensation for 15 days of "homelessness" i.e approx \$120 per day to cover "accommodation", also the full amount that it cost us to move and put our household contents into storage, plus "doctors bills."

4. Respondent's Submission

- 4.1 Licensee Shalery Raynes maintains that the Bs were never homeless and were staying with friends.
- 4.2 Shalery Raynes maintains that the Bs were always going to have to move twice.
- 4.3 Shalery Raynes feels that a lot of the statements made by the Bs were completely untrue.
- 4.4 Shalery Raynes maintains that the Authority has taken a lot of the complaint at face value and has not taken into account the original response [to the complaint].
- 4.5 Raynes states that the Bs were paid a full and final settlement.

- 4.6 Shalery Raynes maintains that the delay in payment [for the settlement] was because the account was in dispute as the Bs had given her false information when the original agreement was signed.
- 4.7 Shalery Raynes believes that the whole matter has been rectified in her eyes and no further penalties should be applied.

5. Discussion

- 5.1 The Committee is satisfied that licensee Shalery Raynes passed on information to the complainant that was incorrect and agrees that her actions directly resulted in the Bs having to unnecessarily move twice, put their possessions into storage and require accommodation for the period of time between moving into a new home.
- 5.2 The Committee considers that the payment of \$843.75 was not sufficient in the circumstances to compensate the Bs for the loss that they suffered as a result of what in the Committee's view, was bad practice conducted by a licensee.

6. Decision

- 6.1 Pursuant to section 93 of the Real Estate Agents Act 2008, CAC10057 orders:
1. Under s93(1)(c) order that Shalery Raynes apologise to the Bs in writing.
 2. Under 93(1)(f)(ii) order that Shalery Raynes, at her own expense, pay the Bs \$900 (50% of the \$1,800 accommodation costs of the complainants).
- 6.2 The orders have to be adhered to within 20 working days of this decision. Proof of payment and a copy of the letter of apology is to be provided to the Real Estate Agents Authority.

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 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.

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.

Signed



Anna Tierney
Chairperson
Complaints Assessment Committee
Real Estate Agents Authority
Date: 10 March 2011