

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

And

In the Matter of **Complaint No: CA3843948**

In the Matter of **Ernest Twigg**
License Number: 10012019

Decision of Complaints Assessment Committee

Dated this 17th day of March 2011

Complaints Assessment Committee:

CAC10048

Chairperson: Debbie Van Zyl

Deputy Chairperson: Rob Crozier

Panel Member: Denise Bovaird

Complaints Assessment Committee

Decision on Orders

1. Introduction

- 1.1 By its decision dated 12 January 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, Ernest (James) Twigg, of Arthur Gordon Pryde (trading as Franklin Real Estate), has engaged in unsatisfactory conduct as that term is defined in section 72 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 Mr C and Mr Twigg to make any comments or submissions they wished within ten days from the date of the Committee's determination.
- 1.4 Mr C did not make any submission. In an email to the Investigator Mr Twigg said that he had nothing to add, but that he wants the following noted (this is quoted verbatim):
"It should be noted I am the agent who handed back to the Vendor of a property at (the property location) the entire commission when a buyer failed to settle on his purchase at an auction. Commission I was entitled to but I was prepared to work an additional 6 months to get the property sold for the Vendor."

2. Principles considered

- 2.1 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 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)).

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 Act.

c. 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.)

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 Act.

2.2 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. Complaints Assessment Committee Determination under section 93

3.1 Mr Twigg engaged in unsatisfactory conduct in that he breached Rules 9.1 and 9.5 as he did not follow his client's instruction to cancel the listing and therefore did not act in the best interest of his client and further that he did not provide an appraisal of the property as required.

3.2 Having regard to the facts of this case as in the Committee's determination dated 12 January 2011, Mr Twigg's emailed comments to the Investigator when he informed the Investigator that he will not make any further submissions and the established unsatisfactory conduct and functions which the imposing of a penalty is designed to serve, the Committee has determined to make the following order under section 93(1):

3..2.1 The Committee is censuring Mr Twigg;

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

4. Publication

4.1 One of the functions of the Committee is to publish its decisions (section 78(h)). The Committee has the power under section 84(2) to direct such publications of its decisions under section 93 as it considers necessary or desirable in the public interest.

4.2 The Committee regards the publication function as one of the means to educate and raise industry standards by making public the nature of conduct which the Committee considers to be unsatisfactory and the consequences for licensees engaging in such conduct. Publication also gives effect to the purpose of the Act set out in section 3 by ensuring transparency in the disciplinary process.

4.3 The Committee considers that to ensure the principal purpose of the Act is achieved, its decision dated 12 January 2011 and this decision ought to be published. Publication is regarded as necessary for the purposes of standard setting in this case and it is also in the public interest that the decisions be published.

4.4 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. Any such publication should not occur until the Authority is satisfied that Mr Twigg has been notified of this decision as to penalty.

5. Right of Appeal

5.1 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.

- 5.2 Appeal is by way of written notice to the Tribunal. You should include a copy of this Notice with your Appeal.
- 5.3 Further information on lodging an appeal is available by referring to the **Guide to Lodging an Appeal** at www.justice.govt.nz/tribunals.

Signed

A handwritten signature in blue ink, appearing to read 'Debbie Van Zyl', enclosed in a light blue rectangular box.

Debbie Van Zyl
Chairperson
Complaints Assessment Committee
Real Estate Agents Authority
Date: 17 March 2011