

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

And

In the Matter of **Complaint No: CA3863685**

In the Matter of **Carolyn Bramley**
License Number: 10029970

Decision of Complaints Assessment Committee

Dated this 6th day of April 2011

Complaints Assessment Committee:

CAC10037

Chairperson: Sandra Gill

Deputy Chairperson: Robyn Wilson

Panel Member: Denise Bovaird

Complaints Assessment Committee

Decision finding unsatisfactory conduct

1. The Complaint

- 1.1. The Licensee, Ms Carolyn Bramley (Ms Bramley), currently holds a Salesperson's License and is employed by Leaders Real Estate which trades as RE/MAX Leaders (REMAX).
- 1.2. The alleged conduct leading to the complaint occurred on 25 – 26 July 2010 and is covered by the Real Estate Agents Act 2008 (the Act).
- 1.3. The complaint was received by the Real Estate Agents Authority (the Authority) on 6 August 2010.

2. Background

- 2.1. Ms C (Ms C) is supported by her ex-partner Mr C2 (Mr C2) in making this complaint. Mr C2 provided confirmation in writing that he supported Ms C in her complaint and agreed with all she had written.
- 2.2. Ms C outlined her complaint in the Authority's complaint form dated 3 August 2010 and also provided a written supporting statement.
- 2.3. Ms C complaint is that she believes that Ms Bramley disclosed the complainant's personal details (the balance of their mortgage) to the prospective purchasers, which is a breach of the Privacy Act 1993.
- 2.4. Ms C reported that on 25 July 2010, she received a text from Mr Simon van der Hoorn (Mr van der Hoorn) asking if she and Mr C2 were available to receive an offer on their property. An appointment was then made for 8pm that evening.
- 2.5. Mr van der Hoorn and Ms Bramley arrived with the offer and went through the details with Ms C and Mr C2.

- 2.6. Ms C states that after discussion, she and Mr C2 then countersigned the offer at \$310,000 based on the fact that Mr van der Hoorn *“would be taking the purchaser’s through our valuation and builders reports to indicate the added value”*.
- 2.7. Ms C says that she originally intended to go back at \$305,000 as she *“wasn’t going to lose the sale for the sake of a couple of thousand (potential) shortfall”*.
- 2.8. Mr van der Hoorn and Ms Bramley left at around 8.40pm and Ms C and Mr C2 were given the impression they were going to see the prospective purchaser. Ms C and Mr C2 were also informed by Mr van der Hoorn that he and Ms Bramley would be back later that evening after talking to the prospective purchasers.
- 2.9. At 10.19pm Ms C sent Mr van der Hoorn a text asking if he and Ms Bramley would return that evening. Mr van der Hoorn phoned at 10.20pm and informed her that he and Ms Bramley had just left the prospective purchasers and wanted time to mull over the reports and discuss them with family. Mr van der Hoorn then told Ms C that he and Ms Bramley would *“be back there tomorrow (Monday) to sort it out, and that he wasn’t sure if they could get them up to the \$310,000 but that the signs were good”*.
- 2.10. The next time Ms C heard from Mr van der Hoorn was at 3.51pm the next day when he sent a text asking for information regarding the property and Ms C replied straight away. There was an exchange of text messages and Mr van der Hoorn said he was about to call the buyer.
- 2.11. Having heard nothing from Mr van der Hoorn by 7.09pm, Ms C sent him a text enquiry to which there was no response.
- 2.12. Ms C states that at 7.39pm, Mr C2 phoned Mr van der Hoorn on her phone and Mr van der Hoorn informed Mr C2 that he *“was cooking tea for my kids and will call the buyers when finished and call you back”*.
- 2.13. Ms C then sent a text to Ms Bramley asking her for information. Ms Bramley telephoned her and informed her that there had been several calls backwards and forwards between herself and the purchasers. Ms Bramley informed Ms C that she couldn’t tell her what had happened as Mr van der Hoorn was the listing agent and it was up to him to provide the information.

- 2.14. Ms C states that after a *“long winded conversation”*, Ms Bramley informed her that the prospective purchaser had withdrawn their offer and that Ms Bramley had informed Mr van der Hoorn at around 4.20pm that afternoon.
- 2.15. Ms Bramley also informed her that she had gone to see the prospective purchasers the previous evening and *“against her better judgment, had presented them with all of our reports (Builders Report, Valuation, LIM, etc)”*.
- 2.16. Ms C asked Ms Bramley what time she had finished at the prospective purchasers and was told *“around 9.20pm”*.
- 2.17. Ms Bramley also informed Ms C that she had told the prospective purchasers that she wasn't able to tell them what Ms C and Mr C2 had paid when they purchased the property, but that she [Ms Bramley] had told them that their offer of \$290,000 *“was not going to cut it because we owed \$XXXK (she gave them the figure) plus penalties on the mortgage”*.
- 2.18. Ms Bramley then spoke to Mr C2 and gave him the same information, and Mr C2 then informed Ms Bramley that he would be calling Mr L3, to discuss the matter with him which he did.
- 2.19. Ms C and Mr C2 were *“extremely disappointed that through incompetence the deal had been lost.”*
- 2.20. Ms C and Mr C2 were then offered a reduced commission if they accepted the offer of \$290,000 but as far as they were aware, *“the offer was no longer on the table”*.
- 2.21. Ms C states that the outcome sought is that Ms Bramley has training in confidentiality and privacy issues.
- 2.22. When given the opportunity to respond to Ms Bramley's response to her complaint, Ms C reiterated the details of her complaint and also stated that *“Carolyn [Ms Bramley] had, prior to receiving my complaint, acknowledged and apologised for her contribution to the situation. However she has now retracted and attempted to exonerate herself from any fault and changed her story to accommodate Simon's [Mr van der Hoorn]”*.
- 2.23. Ms C says that Ms Bramley
- Stated that the offer had been withdrawn at 4.20pm that afternoon and she had asked Mr Van der Hoorn to let us know at that time

- Did state (more than once during the course of the Monday night conversation) that the offer had been withdrawn
- Told both Ms C and Mr C2 that she had relayed our mortgage figure to the prospective purchasers in an attempt to convey to them why we wouldn't accept \$290,000

2.24. Ms C says that *"I did not, as Carolyn puts it, "exaggerate" in my complaint. This is a sweeping statement on her part and does not cite any specifics of my so-called exaggeration"*.

2.25. Ms C goes on to state that there is not a lack of communication between she and her ex-partner as suggested by Ms Bramley and they are in regular contact. Mr C2 also signed this letter and in an interview with an Authority Investigator reiterated his support for Ms C and his agreement with her statements.

3. Licensee Response

3.1. Ms Bramley replied in a letter dated 25 August 2010. She also provided supporting letters from Mr L3, of REMAX and Mr van der Hoorn.

3.2. Ms Bramley said she did not provide the prospective purchasers with the figures regarding Ms C's and Mr C2' mortgage and penalties, and that she doesn't know this information herself. She states that *"All I said to the purchasers was that \$290,000 was not sufficient, as the vendors have their mortgage to pay out"*.

3.3. In regard to the countersigned offer, Ms Bramley states that *"(Ms C and Mr C2) agreed with the figure of \$310,000, there was no mention of \$305,000."*

3.4. Ms Bramley went in alone to discuss the counter offer with the prospective purchasers. Mr van der Hoorn waited outside in his car and following her discussion with the prospective purchasers, she then provided Mr van der Hoorn with an overview while sitting in his car.

3.5. Ms Bramley says she did not tell Ms C that the offer had been withdrawn, but did say that the offer would not be increased because there was major work that needed to be done on the property.

3.6. Ms Bramley states that in regard to Ms C texting her for information, she informed Ms C that *"Simon was going to talk to the purchasers himself as I was unsuccessful"*.

3.7. Ms Bramley states that *"After reading (Ms C's) complaints regarding myself and Simon, I was disappointed that she exaggerated so much, when in fact Simon and myself bent over backwards to accommodate her. Her lack of communication between herself and her ex partner has probably contributed to this outburst of frustration that the house has not sold"*.

4. Extra information

4.1. The Complaints Assessment Committee (the Committee) requested that the Authority interview the prospective purchasers and ask them to provide an outline of their experience of the process. Ms P (Ms P) was interviewed by an Investigator on 22 October 2010.

4.2. Ms P said that she and her partner went to view the property a number of times, initially at an open home, and then decided to put in a low offer as they perceived some problems with the property.

4.3. Ms P and her partner went to the local REMaX office on the Sunday just before closing and met with Mr van der Hoorn and Ms Bramley to make an offer on the property.

4.4. Later that night, Ms Bramley arrived at Ms P's home just after 9pm and she and her partner were *"a bit shocked by this as there had been no messages or calls"* from either Ms Bramley nor Mr van der Hoorn asking if it was a suitable time to visit.

4.5. Ms Bramley said she thought Mr van der Hoorn had called.

4.6. Ms P states that Ms Bramley arrived alone and *"brought the offer and all the papers over and wanted us to make a decision there and then but we said no"*.

4.7. Ms P said she and her partner informed Ms Bramley that they would not make a decision then but that they would get back to her by midday the next day as they wished to talk to family and look through the reports on the property. She said that Ms Bramley *"stayed for about 10 to 20 minutes"*.

4.8. Ms P and her partner contacted Ms Bramley the next day after lunchtime and told her they had decided not to accept the counteroffer and they didn't want to take the process any further.

4.9. Ms P said that during this discussion, Ms Bramley then mentioned *"that the people had a mortgage up to a certain point and that's why they wanted that price"*.

4.10. Ms P goes on to state *"I hate saying stuff like this but once we declined the offer I got Carolyn on the phone pressuring us and then Simon on the phone pressuring me and at that point we even stopped looking at houses"*.

5. Information and Material Considered

5.1. The Authority received Ms C' complaint against Ms Bramley on 6 August 2010 and referred the complaint to the Committee. Pursuant to section 79(1) of the Act, on 16 August 2010 the Committee considered the complaint and determined to inquire into it.

5.2. The Committee invited Ms Bramley to provide a written response to the complaint dated 25 August 2010. She also provided supporting letters from Mr L3 of REMAX and Mr van der Hoorn.

5.3. The prospective purchaser of Ms C' property, Ms P, was also interviewed by an Investigator on 22 October 2010.

5.4. Having considered all the written information and supporting documentation provided by Ms C and Ms Bramley, and also Ms P, and having satisfied itself that it had completed its inquiry into the complaint, the matter was again considered by the Committee on 26 January 2011.

5.5. The hearing was conducted on the papers pursuant to section 90 of the Act. Pursuant to section 90(2) the Committee made its determination on the basis of the written material before it.

6. Decision

6.1. It is clear from the evidence provided to the Committee, that the behavior of Ms Bramley during the period of 25 and 26 July 2010 fell short of the standard that a reasonable member of the public is entitled to expect from a reasonably competent licensee (section 72(a) of the Act).

6.2. For these reasons the Committee has determined under section 89(2)(b) of the Act that it has been proved, on the balance of probabilities, that Ms Bramley has engaged in unsatisfactory conduct as set out in section 72(a) of the Act albeit at a lower level.

- 6.3. The evidence provided to the Committee from Mr L3 of REMAX, is that Ms Bramley was a relatively inexperienced real estate agent in July 2010, so he suggested that she get the listing agent for the property, Mr van der Hoorn, involved with the negotiations, which she did.
- 6.4. It would appear that Ms Bramley's inexperience resulted in a number of the issues arising in this complaint.
- 6.5. Ms Bramley states she did not tell Ms C that the offer had been withdrawn. She told her that the prospective purchaser was not going to raise their offer and that she did not give out the confidential information on Ms C' mortgage and penalties and in fact did not know the amount of mortgage owing.
- 6.6. Despite Ms Bramley's belief that the prospective purchaser had not withdrawn their offer, Ms P, in her interview with the Authority Investigator, stated that she had informed Ms Bramley that not only would she and her partner not accept the counter offer, they didn't want to go any further with the process.
- 6.7. Ms P says she informed Ms Bramley of this after lunch on 26 July 2010, but Ms Bramley did not let Ms C know until that evening. Ms Bramley gives no explanation in her response as to why it took her that length of time to notify Ms C, but this time frame stretches the meaning of timeliness.
- 6.8. In regards to the mortgage information, Ms P states Ms Bramley then mentioned "*that the people had a mortgage up to a certain point and that's why they wanted that price*". The Investigator makes no mention of any monetary amount being indicated.
- 6.9. While Ms Bramley may or may not have mentioned any monetary figure, she did tell Ms P that Ms C needed a certain price due to mortgage constraints.
- 6.10. Ms Bramley must remember who her client is - it is the vendor. Regardless of why a vendor needs to realise a certain figure in the sale of their property, this information belongs to the vendor and there are many more appropriate ways to state that a vendor is set on a certain figure.
- 6.11. Also of concern to the Committee was the fact that Ms Bramley arrived at Ms P's home at 9pm in the evening without any prior phone call or warning, and Ms P felt pressured by Ms Bramley following the decision not to progress the process any further.

- 6.12. The Committee is of the opinion that this complaint has arisen more through Ms Bramley's inexperience than any malicious intent and that she will benefit from good mentoring and further experience in the real estate industry.
- 6.13. It is important to note that, based on the evidence provided to the Committee, Ms P and her partner did not make the decision to not proceed with the purchase of the property due to any action of Ms Bramley, but rather the fact that they were not prepared to go higher than their initial offer and also because of the work they perceived needed at the property.
- 6.14. Taking into account all the circumstances described above, the Committee makes a determination under section 93(a) in that it makes an order censuring Ms Bramley. The Committee also makes a determination under section 93(c) and makes an order that Ms Bramley apologise in person to Ms C.
- 6.15. Ms Bramley is to apologise to Ms C within 30 days of receiving this notice and Ms Bramley is to notify the Committee in writing that this has been done.

7. Publication

- 7.1. One of the functions of the Committee is to publish its decisions (section 78(h)).
- 7.2. The Committee has determined that this decision should be published in the interests of ensuring the disciplinary process remains transparent, independent and effective. The Committee also regards publication of this decision as desirable for the purposes of standard setting and it is in the public interest that the decision be published.
- 7.3. The Committee hereby authorises the Authority to publish this decision by whatever means it considers appropriate provided that the names and identifying details of both the complainant (including the address of the property) and any named or identified third parties are omitted from publication.

8. Right of Appeal

- 8.1. A person affected by a determination of a Committee may appeal to the Disciplinary Tribunal against a determination of the Committee within 20 working days of 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

A handwritten signature in blue ink, appearing to read 'Sandra Gill', written in a cursive style.

Sandra Gill
Chairperson
Complaints Assessment Committee
Real Estate Agents Authority

Date: 6 April 2011