

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

And

In the Matter of **Complaint No CA2345295**

In the Matter of [REDACTED]
Licence No [REDACTED]

**Decision of Complaints Assessment Committee under section 80(2) of the Real
Estate Agents Act 2008**

Dated this 31st day of March 2010

Complaints Assessment Committee:

CAC No: 100025

Decision of Complaints Assessment Committee

1 Background

1.1 The Licensee, [REDACTED] (“the Licensee/[REDACTED]”) is a salesperson at [REDACTED] trading as [REDACTED]. He has worked in the real estate industry since 1985.

2 Complaint

2.1 The complainant, [REDACTED] jointly owned a property at [REDACTED] [REDACTED] (“the [REDACTED] property”) with her husband (from whom she is now separated), and her son and his partner. [REDACTED] and her husband own five other properties and a family farm.

2.2 The complainant alleges that on 25 November 2009 she happened to drive past the [REDACTED] property and was “surprised” to see a [REDACTED] sign on the verge. She maintains she had not been consulted by her husband about selling this property and her signature, and the signature of the other owners had not been sought by him before the property was listed for sale.

2.3 The complainant stated she had further concerns that the Licensee and her husband had not consulted with her property manager prior to the property being put on the market. She claims that the first time her property manager was aware that the property was for sale was when she took some prospective tenants to the property for a second viewing to rent and saw the for sale sign. The complainant claims that as those people did not want to rent a property which was for sale, she is now “footing the bill for the property as it is vacant when it didn’t need to be”. The complainant says the Licensee did not give her “the courtesy of a phone call to say that he had listed it. Instead he knocked on the door of the property and asked the tenants for access with no notice given to the tenants for this intrusion.”

The complainant states this is “a definite breach of the Tenancy Act 1986.” She describes [REDACTED] conduct in this regard as “cavalier” and “illegal”.

Information and Material Considered

- 2.4 The Real Estate Agents Authority received [REDACTED] complaint against [REDACTED] on 9 December 2009 and referred the complaint to the Complaints Assessment Committee. Pursuant to section 79(1) of the Real Estate Agents Act 2008 (the REAA), on 20 January 2010 the Committee considered the complaint and determined to inquire into it. The Committee was satisfied that although the complaint relates to conduct which occurred prior to the REAA coming into force, the Committee had jurisdiction under section 172(1) to inquire into the complaint.
- 2.5 The Committee invited [REDACTED] to provide a written response to the complaint and this was received on or around 3 February 2010.
- 2.6 An investigator in the Complaints Unit of the Real Estate Agents Authority spoke to the complainant by telephone on 16 December 2009. During that telephone call the complainant provided further details about the ownership of the [REDACTED] [REDACTED] property and about her anger at having found the property had been listed without her first having been told that a For Sale sign was being erected. She claimed that she had told [REDACTED] in the past couple of months specifically not to list the [REDACTED] property for sale as she and her husband “were still sorting out the ownership and separation settlement”. She claimed further that her property manager had told her that the For Sale sign had been up for two weeks and that [REDACTED] had taken people through the property without giving the tenants notice (although ultimately they allowed him access).
- 2.7 In his letter of response to the complaint, [REDACTED] stated that he had known both the complainant and her husband for many years through their business, community organisations and socially. From his perspective he has always had a good working relationship with both the complainant and her husband.

- 2.8 [REDACTED] stated that on numerous occasions he had been asked by the complainant to carry out appraisals on their jointly owned properties, including a property at [REDACTED] and a property at [REDACTED]. [REDACTED] stated that over the years the relationship he has had with the complainant and her husband “has been such that I have never questioned each ones individual authority to instruct me to do real estate work on their behalf”.
- 2.9 [REDACTED] stated that in late September 2009 he was asked by [REDACTED] to give them a market appraisal of their farm in [REDACTED]. He stated that his understanding was that their relationship was suffering strain and they wished to consider options should they ultimately separate. [REDACTED] maintains he spent a considerable amount of time on the assignment as the farm had to be appraised as a whole and also as a subdivision of 5 or 6 titles. [REDACTED] stated that both [REDACTED] were involved in this process; [REDACTED] supplied him with the plans of the farm and possible subdivision and during the process the three of them “sat around the dining room table of the family home and discussed the possibilities and outcomes over cups of tea”. [REDACTED] stated that while he understood they were having marital problems his discussions with [REDACTED] were “always of an agreeable nature”.
- 2.10 [REDACTED] stated that it was during this process he was asked to do a ‘drive-by’ estimate of the market value of the [REDACTED] property. He says he is unsure by whom he was asked to do this. He stated he was requested to a ‘drive by’ because the [REDACTED] did not want to “unnerve the tenants at the time”.
- 2.11 [REDACTED] stated that on 9 October 2009 he asked a [REDACTED] salesperson who lives in [REDACTED] to assess a “ball-park” sale price of the [REDACTED] Road property by “just driving past”. [REDACTED] reported back that same day and [REDACTED] says he passed the assessment on although to whom he could not be certain.
- 2.12 [REDACTED] stated that on 12 November 2009 [REDACTED] came to the [REDACTED] office and told him that the tenants in the [REDACTED] property had given

- notice to vacate and that it would be a good time to sell the property. [REDACTED] stated he was asked by [REDACTED] to “get a sign up as soon as possible”. [REDACTED] stated he was about to leave the office to deal with another matter but that he and [REDACTED] “agreed to organise the paperwork at a later time”.
- 2.13 [REDACTED] explained he asked [REDACTED] to assist him and he instructed [REDACTED] to go and ask the tenants if they minded a For Sale sign being erected on the property and if necessary, prospective purchasers being shown through the property. [REDACTED] was told by [REDACTED] the tenants had no issues with these matters.
- 2.14 [REDACTED] stated it was his understanding that [REDACTED] was arranging for himself and his wife to come into [REDACTED] and sign the appropriate documentation the following week. To his knowledge they were still living together in the family home. He was not aware, and maintains he still does not know, if they had separated at that time.
- 2.15 [REDACTED] stated that on 25 November 2009 [REDACTED] phoned the [REDACTED] office and voiced her disapproval about the sign having been erected at the [REDACTED] property. The sign was subsequently removed from the property that day by [REDACTED]. [REDACTED] stated that he spoke to [REDACTED] about his wife’s position and told him the sign would be removed because she was obviously not agreeable to the property being sold at that time and he would not proceed with a listing authority. The following day [REDACTED] apparently attended at the [REDACTED] office and left once she was aware or informed the company did not hold a listing authority for the property.
- 2.16 [REDACTED] stated that [REDACTED] did not manage the property and maintained that it is the owners’ obligation, one of whom is [REDACTED], to notify whom [REDACTED] claims is her property manager. [REDACTED] denies that he had scant regard to the tenants and says that he acted with their consent.

2.17 [REDACTED] stated that he is disappointed that he appears to be caught in a “hostile matrimonial matter”. He stated “it is disappointing because [he has] always felt that [he] had a good relationship with both parties and have always acted for both of them, in good faith.”

2.18 During the course of the Committee’s investigation information was obtained from [REDACTED]. The Committee received a letter from [REDACTED] dated 3 February 2010. [REDACTED] confirmed [REDACTED] account of the events of 12 November 2009 when he called at [REDACTED] offices in [REDACTED] and asked [REDACTED] to assist in the sale of the [REDACTED] property. [REDACTED] stated that “getting a buyer prior to the tenants vacating was important to [him]” and so he “stressed there was some urgency in him [REDACTED] acting.” [REDACTED] confirmed that it was agreed that “any paperwork would be tidied up at a later time”. [REDACTED] stated as “as part-owner I believed I had the authority to instruct [REDACTED] as I did”.

2.19 [REDACTED] was also spoken to by telephone on 9 February 2010. An investigator in the Complaints Unit of the Real Estate Agents Authority made this telephone call. A file note of the investigator’s telephone call with [REDACTED] was before the Committee. During that telephone call [REDACTED] explained that [REDACTED] did for a time manage the [REDACTED] property but that because the property manager was not considered to be doing a good job, [REDACTED] instructed a woman from [REDACTED] to take over the management of the property. [REDACTED] stated that his wife was aware that he did not want the [REDACTED] property and that he had not wanted to purchase it “in the first place”. [REDACTED] clarified the position in relation to the ownership of the property. He stated that he and his wife had recently bought out the shares which his son and his partner had in the property. This occurred in November 2009 but it was agreed that the title to the property would not be changed until 22 February 2010 when the mortgage came up for renewal (the effect of this was that although the son and his partner no longer owned any shares in the property their names were still recorded on the title to the property). [REDACTED] stated that as one of the owners of the property he

believed he had authority to ask [REDACTED] to 'put a sign up' but that he knew that both himself and [REDACTED] would have to sign the listing agreement.

2.20 Having received [REDACTED] written response to the complaint, on 10 March 2010 the Complaints Assessment Committee met to discuss the material it had obtained to date and to determine whether or not any further inquiries or action were necessary.

2.21 In summary, at the meeting the Committee considered the following written material:

- a. [REDACTED] letter of complaint dated 3 December 2009;
- b. File note of investigator's telephone discussion with [REDACTED] on 16 December 2009;
- c. Certificate of Title of the [REDACTED] property – search copy dated 18 December 2009;
- d. Job Sheet – Complaints Unit of the Real Estate Agents Authority recording details of telephone conversations with the complainant on 26 January 2010 and with [REDACTED] on 9 February 2010 (referred to above);
- e. Letter of response from [REDACTED] dated 3 February 2010;
- f. Letter from [REDACTED] to the Complaints Assessment Committee dated 3 February 2010.

3 **Decision under section 80(2)**

3.1 At its meeting on 10 March 2010 the Committee made a decision pursuant to section 80(2) of the REAA, not take any further action on the complaint.

3.2 Having received the Licensee's response to the complaint, and having considered that material along with the other material before the Committee (referred to

above), it appears to the Committee that, having regard to all the circumstances of the case, no further action is necessary.

- 3.3 The Committee considers that the complaint must be viewed in its proper context. The key feature in this case is the longstanding and ongoing working relationship which it is apparent [REDACTED] had with both the complainant and her husband. Another important feature is what appears to the Committee to be an acrimonious relationship which has developed between the complainant and her husband.
- 3.4 The Committee does have some concern that a For Sale sign was erected on the property without a Listing Authority having first been signed by the registered proprietors of the property. There is no dispute about the fact that this occurred. In most cases it would be reasonable and expected that a Licensee would have secured a signed Listing Authority from the vendors before erecting a For Sale sign and marketing a property for sale. This would offer both the Licensee and the vendors the various protections that a Listing Authority typically provides.
- 3.5 However the Committee is of the view that in this case, when all the circumstances are taken into account, the Licensee's failure to have 'completed the paperwork' (in particular, obtained a signed Listing Authority) before erecting the sign can be regarded as an acceptable departure from what is normally considered acceptable practice. The Committee accepts [REDACTED] explanation that he believed he had the authority of both the complainant and her husband to erect a For Sale sign [REDACTED] had had recent dealings with [REDACTED] relating to their farm property at which time he had discussions with them about the [REDACTED] property. The Committee has no reason to doubt his evidence that based on his longstanding relationship with them he had never questioned their individual authority to instruct him to carry out real estate work on their behalf, including on the [REDACTED] property. The Committee accepts his explanation, supported by [REDACTED] that it was intended that both [REDACTED] and the complainant would sign a Listing Authority in the imminent future.

3.6 It is noted that as soon as [REDACTED] was notified of the complainant's dissatisfaction that a For Sale sign had been erected at the property, he took immediate steps to notify [REDACTED] of this and to inform him that he could not proceed with a Listing Authority in those circumstances; and further he took immediate steps to remove the sign. These actions are consistent with [REDACTED] evidence as to his understanding at the time [REDACTED] asked him to erect a sign, that he had the authority of both [REDACTED] and his wife to proceed in this manner. As soon as it transpired he did not, [REDACTED] acted promptly and reasonably to cease his involvement in the marketing of the property for sale.

3.7 The complainant's contention that [REDACTED] should also have obtained the consent and written authority of "the other owners" (her son and his partner) before erecting the sign, is without foundation. The Committee is satisfied the complainant knew at the time she wrote her letter of complaint that she and her husband had recently bought out the shares in the property which her son and his partner had owned. The Committee is concerned the complainant made this allegation against [REDACTED] with that knowledge.

3.8 In all of the circumstances the Committee is of the view it is not necessary to take the matters raised in the complaint any further.

3.9 It is noted that when the Committee gives the complainant written notice of this decision a copy of the Licensee's response to the complaint will also be provided to her.

4 **Right of Appeal**

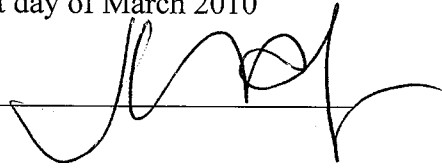
4.1 A person affected by a determination of a Committee may appeal to the Disciplinary Tribunal against a determination of the Committee within 20 working days of the date of this notice.

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

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

DATED this 31st day of March 2010

Jo Hughson
Chairperson

A handwritten signature in black ink, appearing to be 'Jo Hughson', written over a horizontal line.