

Complaints Assessment Committee - Decision

Complaints Assessment Committee Number:	CAC10011
Complainant	“Mr A”
Licensee	Martin Mackenzie
Chairperson	Deirdre McNabb
Deputy Chairperson	Denise Bovaird
Panel Member	Rob Crozier
Complaint Reference Number:	CA2364483

Decision

The Committee noted the explanation provided by the Licensee and noted that the conduct complained of occurred after 17 November 2009. It also noted Rule 9.2 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009 which set minimum standards of conduct and client care that licensees must meet when carrying out their real estate agency work. That rule provides that a licensee should not engage in any conduct that would put a client under undue or unfair pressure. The CAC considered the nature of the coercion or pressure complained of and sought to identify whether there was sufficient conduct of this nature to amount to unsatisfactory conduct in terms of the Act. It noted:

1. It is appropriate for a Licensee to discuss the state of the real estate market affecting a property that subsequently becomes the subject of a complaint under the Act and the CAC recognizes that this may be perceived by some vendors as pressure or coercion regarding a potential agreement for the sale of their property. The Licensee admits to discussing the state of the market as he saw it affecting the sale of the property in question.
2. These discussions took place late in the evening.
3. The Licensee discussed what he considered to be negative legal consequences for the complainant if he did not sign the offer. In particular he spoke of the complainant's ex wife being able to force a mortgagee sale when she moved out of the house (2-3 weeks after the conduct) which would result in a much lower sale price. He also indicated that she could take action through her lawyer for obstructing the sale by refusing a 'reasonable' offer. The complainant understood from this that he could have been sued if the purchaser walked away.

Taking into account the totality of these circumstances, the CAC considered that there was coercion/pressure by the Licensee on the complainant. It considered that discussing the threat of potential legal consequences that might ensue against the complainant if the offer was not signed on top of the other circumstances present took the conduct beyond an acceptable level of pressure/coercion on the part of the Licensee so that Rule 9.2 had been breached.

Accordingly the CAC determined that the Licensee had engaged in unsatisfactory conduct in terms of section 89(2)(b) of the Act. While coming to that decision, the Committee does note the following:

1. In spite of the pressure applied, the complainant did not in fact sign the contract at the time when the Licensee sought his signature - he signed at the end of the following day.

2. The complainant could have used the time (almost a day) between when the offer was first presented and when he actually signed to check the legality of the representations made by the Licensee about the complainant's legal position. He could also have checked the authenticity of the suggested threats with his estranged wife with whom he seems to be on reasonable terms. He did not appear to do so and seemed to focus more on his ability to buy the property himself at the suggested price.

The Committee proposes to take these matters into account in deciding what orders to impose under s 93 of the Act but will receive any written submissions that the parties wish to make within 10 working days of receiving this notice before reaching a decision on orders.

Signed

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke.

Deirdre McNabb
Chairperson
Complaints Assessment Committee
Real Estate Agents Authority

Date: 29/04/2010