

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

And

In the Matter of **Complaint No: C19706**

Weiwei Miao (20028808)

Laing Dai (20018084)

Decision of Complaints Assessment Committee

Decision to take no further action

13 September 2017

Complaints Assessment Committee: CAC 412

Chairperson: Bernardine Hannan

Deputy Chairperson: David Bennett

Panel Member: Craig Edwards

Complaints Assessment Committee

Decision to take no further action

1. The Complaint

- 1.1. On 7 April 2017 the Real Estate Agents Authority (the Authority) received a complaint against Weiwei Miao (Licensee 1) and Laing Dai (licensee 2) from Hamish Osborne (the Complainant).
- 1.2. The Licensees are licensed salespersons under the Real Estate Agents Act 2008 (the Act).
- 1.3. The complaint relates to a property situated at 20 Ayr Road, Pakuranga, Auckland (the Property).
- 1.4. The details of the complaint are that the Complainant alleges that the Licensees did not act in his best interest or negotiate the best sale price when selling his property in July 2016. The Complainant was concerned that he was placed under undue pressure to negotiate and accept the offer of sale and purchase signed on 5 July 2016 in circumstances where it may have been possible to obtain a higher price.
- 1.5. On or about 30 March 2017 the Authority received information in regard to the on selling of properties in the Ayr Road area which resulted in a \$600,000 increase during the resale of two properties. The information provided suggested that the properties were on sold prior to settlement by the initial purchaser for \$300,000 (each) more than originally paid for them.
- 1.6. The Authority undertook an investigation into the on selling of these two properties in July 2016. During the course of this investigation the Complainant became aware of the contemporaneous settlement of his property with a third party purchaser which resulted in the on selling of the Property for a substantially higher value. The Complainant then laid this complaint with the authority on 7 April 2017.
- 1.7. In particular, the Complainant alleges he was approached by the Licensees in early June 2016 and advised that they had investors wanting to buy the Property. The Complainant claims to have been told that the Licensees were talking with his neighbours, attempting to set up a large parcel of land that would be attractive to investors under the proposed Unitary Plan.
- 1.8. The Complainant was given an estimate of his property, appraising it at \$1,150,000. Not long after that the Licensees took a couple of prospective buyers through. The Complainant was presented with an offer of \$1,200,000 which was countersigned at \$1,300,000. On 5 July 2016 the price was agreed at \$1,250,000. Settlement occurred on 30 September 2016. The Complainant understands that the purchaser also purchased the neighbouring property at 23 Ayr Road at the same time.
- 1.9. The Complainant was then contacted by a person from the New Zealand Herald questioning the sale and asking the Complainant if he was aware that the Property had been on sold on 8 July 2016 for sale price of \$1,550,000. The same thing happened at 23 Ayr Road leaving their purchaser with a profit of \$600,000 over the two properties.
- 1.10. The Complainant was naturally concerned at receiving this information and requested the Authority to consider whether the Licensees had acted fraudulently or incompetently in this matter.

- 1.11. The Complainant requested a remedy, being:

Compensation of \$300,000, being the difference between the first and subsequent on sell value
- 1.12. The Licensees responded to the complaint against them and denied any allegation of wrongdoing.
- 1.13. In particular, the Licensees admitted that they listed 21 and 23 Ayr Road together in June 2016. The Licensees considered this to be of benefit to both vendors as they could maximise the development potential of the properties and attract buyers other than residential home owners.
- 1.14. The Licensees claim it was recommended to the Complainant (as representative of the vendor Thomas and Alice Investment Ltd) that the Licensees undertake a full marketing campaign with a campaign budget of approximately \$3000. The Licensees claim the Complainant was worried that engaging in a full marketing campaign would affect his current tenants and he was reluctant to pay the marketing costs in the event that it did. The Complainant informed them that he had very good tenants and he needed time to handle the sale process. The Licensees were instructed to arrange viewings only through him rather than allowing the Licensees to contact the tenants directly. The Licensees adhered to this instruction and commenced marketing the Property without any marketing cost allocated.
- 1.15. The Licensees claim that despite the limited instructions to market the property they did their best to attract multiple buyers by advertising in a number of different avenues. On 2 July 2016 multiple offers were presented to the Complainant (and the vendors of the neighbouring property) by Susan Woolnough, the manager of Harcourt's Howick Branch.
- 1.16. On the evening of 2 July 2016 the Licensees met with the Complainant at his home to discuss the offers. The Licensees claimed that after a relaxed discussion the Complainant agreed to reject the offers and counter offer the offer made by Mr Harpeet Singh (the eventual purchaser) at \$1,300,000.
- 1.17. On 5 July 2016, Mr Singh made a counter offer of \$1,250,000. This offer was presented to the Complainant and the Licensees again met with him that night at his home to discuss the offers. The Complainant appeared delighted with the counteroffer from Mr Singh and confirmed to the Licensees that he was prepared to accept the offer of \$1,250,000.
- 1.18. The Licensees claimed that at both meetings with the Complainant it was suggested to him that he seek independent legal advice and that the Complainant refused this on both occasions.
- 1.19. The Licensees note that even though the listing agreement was signed on 13 June 2016, it did not take effect until 20 June 2016. This was to allow the Complainant some time to liaise with his tenants and ensure the Property was prepared to go to market. While the Licensees accept that this was mostly to give the Complainant time to prepare his tenants for a possible sale, the Licensees also consider that this gave the Complainant sufficient time during this cooling off period to change his mind about listing the Property should he so wish.
- 1.20. The Licensees do not accept that they pressured the Complainant into accepting any of presented offers. Multiple offers were presented to the Complainant on 2 July 2016. The Licensees claim to have recommended to the Complainant that he ought not to accept either of the offers and encouraged him to either counteroffer at a higher amount or wait for a better offer. The Licensees point to the four day gap between when the multi-offer was

presented and the Complainant providing his signature to make the agreement unconditional. The Complainant was aware that during these four days no unconditional sale had been achieved. The Complainant could have pulled out of the agreement at any time with no legal ramifications. The Licensees reiterate that during this time they advised the Complainant to seek legal advice and provided him with sufficient time to do so. The Licensees do not consider that at any time during the process they place the Complainant under any undue pressure.

2. What we decided

- 2.1. On 9 May 2017 the Complaints Assessment Committee (the Committee) considered the complaint and decided to inquire into it.
- 2.2. On 6 September 2017 the Committee held a hearing on the papers and considered all the information gathered during the inquiry.
- 2.3. The Committee has decided to take no further action on the complaint.
- 2.4. This decision was made under section 89(2)(c) of the Act. The decision was also made with reference to the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012.

3. Our reasons for the decision

- 3.1. The Committee concluded:

The Committee was not persuaded that the Licensees had failed to act in the best interest of the Complainant in negotiating the sale and purchase of his property in July 2016.

The Committee was not persuaded that the Licensees had placed the Complainant under undue pressure while negotiating or accepting the sale and purchase offer in July 2016.

Failed to act in best interests of the Complainant

- 3.2. The Committee accepts that the existence of a contemporaneous settlement which results in the on sale of property for a substantially higher value is important evidence the Committee must consider when considering any disadvantage that consumers may suffer at the hands of Real Estate professionals who breach their professional obligations under the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012. However to determine such matters the Committee must consider all the surrounding circumstances and not only an apparent windfall profit made by a third party on seller.
- 3.3. The Committee has considered the Licensees disclosure requirements and whether or not they have provided false or misleading information in regards to the value of the Property. The Committee has been provided information from the agency supervisor who oversaw the transaction including the sale and purchase agreements presented to the vendors as part of the multi-offer negotiations for the Property, the CMA information for both properties and the listing agreements.
- 3.4. A review of this documentation has not identified any deficiencies in the documents' presentation or content. The information provided appears consistent with standard listing procedures. The CMA completed for both properties, while subjective appears consistent with properties previously sold in the area and gives a realistic range of sale price given the volatile period that sale prices were progressing at that time.

- 3.5. Inquiries relating to the purchaser Mr Harpreet Singh have not established any relationship to the Licensees which would activate any further disclosure requirements. There was no evidence before the Committee to support a finding that the Licensees were acting on behalf of a buyer or withheld any information from the Complainant which would have otherwise advantaged him or any other party involved in the transaction.
- 3.6. The Committee accepts the Licensees submission that the marketing campaign was discussed in full with the Complainant, and it was the Complainant's decision to curtail any marketing campaign so as not to disturb the sitting tenants and to constrain sale costs. This view is supported by the documents provided.
- 3.7. The Committee has also considered the evidence of Mr Steve Holling, the registered valuer who was engaged by the on sell purchaser (current owner) to complete a valuation for financing purposes at the time of his purchase in July 2016.
- 3.8. The Committee accepts Mr Holling's evidence does not support the Complainant's assertion that the Property was worth significantly more than the sale price. Mr Holling states that when he completed a valuation on both properties he advised the subsequent purchaser that his valuation could not reach the second sale price and advised that he valued 21 Ayr Road at \$1,300,000 and 23 Ayr Road at \$1,250,000.
- 3.9. Mr Holling also advised that while the properties were potentially sub dividable under the Auckland City Council Unitary Plan, they would still be subject to an extensive consent process involving neighbours and planners. Mr Holling believes the sections themselves were problematic as they were sloping sections zoned in an area which was prone to high rainfall and potential 100 year flooding.
- 3.10. Having assessed the properties Mr Holling advised that he personally felt the purchase price paid by the current owners was well in excess of the market and other properties recently sold in the same area of similar size and characteristics.
- 3.11. On the evidence available to the Committee, and taking account of the provided documentation and the evidence of Mr Holling, the Committee is not persuaded that the Licensees failed to act in the best interests of the Complainant in negotiating the best price for his property during the sale and purchase of July 2016.

Undue pressure to negotiate or accept the offer

- 3.12. The Complainant does not expressly state in his complaint that he was placed under any undue pressure by the Licensees but with the value of hindsight appears concerned that he may have been manipulated by them.
- 3.13. The Licensees deny that at any time during the sale process they placed the Complainant under any undue pressure. While accepting that the initial contact came from them, the Licensees note that whereas the listing agreement was signed on 13 June 2016 it only took effect from 20 June 2016. This was to give the Complainant time to liaise with his tenants regarding the listing and to ensure that the Complainant was prepared for the Property to go to market. The Licensees allege that this one week cooling off period gave the Complainant sufficient time to cancel the listing authority should he wish to change his mind.
- 3.14. The Licensees claim the same applied to the offer and acceptance process. The Licensees point to the timeline where multiple offers were presented to the Complainant on 2 July 2016 and, following a relaxed discussion claim they encouraged the Complainant to reject the offers and counter offer if he wished to do so. The Complainant's counteroffer was then

subject to a further counteroffer by Mr Singh and this offer was presented to the Complainant on 5 July 2016. The Licensees claim again there was a relaxed conversation at the Complainant's home. The Complainant appeared delighted with the counteroffer of \$1,250,000 from Mr Singh and confirmed his preparedness to accept this offer.

- 3.15. The Licensees also reiterate that at both meetings with the Complainant's they suggested that he seek independent legal advice. It is noteworthy that the Complainant refused to do so on both occasions.
- 3.16. Given the submissions and documents before the Committee, there was no evidence to support a suggestion that the Complainant was placed under any undue pressure at either the time of listing the Property for sale or when negotiating and accepting the final offer.

4. What happens next

Your right to appeal

- 4.1. If you are affected by this decision of the Committee, you may appeal in writing to the Real Estate Agents Disciplinary Tribunal (the Tribunal) within 20 working days after the date of this decision. Your appeal must include a copy of this decision and any other information you wish the Tribunal to consider in relation to the appeal. Refer to Appendix section 111.
- 4.2. For further information on filing an appeal, read **Guide to Filing an Appeal** at [Ministry of Justice-Tribunals \(www.justice.govt.nz/tribunals\)](http://www.justice.govt.nz/tribunals).

Publication

- 4.3. At the Committee's discretion, the decision will be published without the names or identifying details of the Complainant (including the address of the Property), the Licensee and any third parties.
- 4.4. The Authority will publish the Committee's decision after the period for filing an appeal has ended, unless the Tribunal receives an application for an order preventing publication. The Authority will not publish the Committee's decision until the Tribunal has made a decision on the application.
- 4.5. Publishing the Committee's decision supports the purpose of the Act by ensuring that the disciplinary process remains transparent, independent and effective. The Committee also considers that publishing this decision helps to set industry standards and that is in the public interest.

Signed



Bernardine Hannan
Chairperson

For Complaints Assessment Committee 412
Real Estate Agents Authority
Date: 13 September 2017

Appendix 1: Relevant provisions

The Real Estate Agents Act 2008 provides:

89 Power of Committee to determine complaint or allegation

- (1) A Committee may make 1 or more of the determinations described in subsection (2) after both inquiring into a complaint or allegation and conducting a hearing with regard to that complaint or allegation.
- (2) The determinations that the Committee may make are as follows:
 - (a) a determination that the complaint or allegation be considered by the Disciplinary Tribunal:
 - (b) a determination that it has been proved, on the balance of probabilities, that the licensee has engaged in unsatisfactory conduct:
 - (c) a determination that the Committee take no further action with regard to the complaint or allegation or any issue involved in the complaint or allegation.
- (2) Nothing in this section limits the power of the Committee to make, at any time, a decision under section 80 with regard to a complaint.

111 Appeal to Tribunal against determination by Committee

- (1) A person affected by a determination of a Committee may appeal to the Tribunal against a determination of the Committee within 20 working days after the date of the notice given under section 81 or 94.
- (2) The appeal is by way of written notice to the Tribunal of the appellant's intention to appeal, accompanied by—
 - (a) a copy of the notice given to the person under section 81 or 94; and
 - (b) any other information that the appellant wishes the Tribunal to consider in relation to the appeal.
- (3) The appeal is by way of rehearing.
- (4) After considering the appeal, the Tribunal may confirm, reverse, or modify the determination of the Committee.
- (5) If the Tribunal reverses or modifies a determination of the Committee, it may exercise any of the powers that the Committee could have exercised.