

Case Study - demanding advertising/marketing expenses contrary to listing authority

Relevant Facts

The Complainant owned a property (the Property) which she listed for sale with the Real Estate Agency. The complaint was made against the Property Agent who was the listing agent.

The listing authority (the Authority) signed by the Complainant indicated that the Real Estate Agency was authorised to incur marketing and advertising expenditure, payment of which was to be made upon settlement.

Five days after the agreement was signed the Real Estate Agency's office administrator emailed the Complainant an invoice for the agreed advertising and marketing amount, payment of which was due the same day.

The Complainant terminated the Authority 20 days into the agreement and before a sale was achieved. The Complainant refused to pay the invoice on the basis that she had been told that payment was not required until the Property was sold/settled.

The Real Estate Agency lodged the debt with the Tasmanian Collection Service to recover their expenses.

Grounds of complaint

- That the Property Agent failed to clearly explain the prospective client's rights and responsibilities under the listing authority in respect to payment of marketing and advertising costs before the prospective client entered into the contract; and
- That the Property Agent demanded payment for work undertaken for a client that exceeded the amount agreed to by the client and contrary to the Authority.

Discussion

Clause 11 of the Authority was pre-printed as follows –

“the Vendor hereby authorises the Agent to incur marketing and advertising expenditure up to the sum of \$.....”

The Property Agent hand wrote the words, “2029.00 PAYMENT ON SETTLEMENT” immediately after the \$ sign. The Property Agent claimed that he had been trained to use the words, “Payment upon settlement or withdrawal”.

He offered no explanation as to why the words used were not in line with his training.

The Property Agent claimed that the Complainant was verbally advised by the Principal of the Real Estate Agency that she would be required to pay the marketing costs in full if the Property was withdrawn, which was disputed by the Complainant. Given that it was a case of one party's word against the other it was not possible for the Board to ascertain whose account was correct but it was not considered to impact the outcome of the Complaint in any event.

The evidence indicated that the listing authority specified that payment of advertising and marketing costs was to be made upon settlement. Irrespective of what a representative from the Real Estate Agency may have verbally told the Complainant (which remains in dispute), there was no provision in the Authority to require immediate payment of marketing costs if the Property was withdrawn from sale, which was the basis upon which the Property Agent claimed that the Complainant was invoiced for the said costs. Regardless, it was noted by the Board that the demand for payment was made prior to the termination of the Authority, which occurred approximately two weeks after the invoice was issued.

Finding by the Board and actions taken

The Board determined that the complaint was substantiated as the Property Agent's conduct of requesting payment for advertising and marketing costs was not in accordance with the provisions of the Authority and as such was not of a standard of competence and diligence that the public is entitled to expect from a reasonably competent property agent.

The Board cautioned the Property Agent pursuant to section 101(6)(a) of the *Property Agents and Land Transactions Act 2016*.