

**IN A MATTER BEFORE  
THE AGENTS LICENSING BOARD  
OF THE NORTHERN TERRITORY**

**APPLICATION FOR DISCIPLINARY ACTION**

**BETWEEN:** **ANTHONY WILLIAM SWORDS AND  
ANNA MARIA SWORDS**  
Applicant

**AND** **TIMOTHY CRAMOND**  
First Respondent

**TWO TONE (NT) Pty Ltd**  
First Respondent

Date of hearing: **23rd May, 2011**

Chairperson:	Sue Philip
Industry Member:	Diane Davis
Departmental Member:	Robert Bradshaw
Appearances:	
Applicant	No Appearance
Respondent	Timothy Cramond
Counsel for the Respondent	Ron Hope

**STATEMENT OF REASONS FOR DECISION**

**Background**

1. On the 24th July 2010 the Applicants Anthony William Swords and Anna Maria Swords, made application to the Board under 68(3) Agents Licensing Act (hereinafter called "ALA") for Disciplinary Action against the Respondents, Timothy Cramond and Two Tone Pty Ltd, trading as HomeHunters Darwin (hereinafter called HomeHunters), on the ground set out in Section 67(1) (c) ALA of breaches of the rules of conduct for agents, such rules being contained in Section 65 ALA.

2. After consideration of the Application and correspondence with the Respondents, the Board set the matter down for hearing on 23rd May 2011 at which time the Respondents were represented by Mr Ron Hope.

### **The Issues**

3. The issues in this Inquiry were:
  - a. a consideration by the Board as to whether the Respondents' actions amounted to a breach of the rules of conduct as contemplated by the terms of Section 65 ALA;
  - b. if so, the appropriate disciplinary sanction.

### **Relevant Legislation**

4. Disciplinary action may be taken against a licensed agent on the grounds provided in section 67 of the Act.

#### **67. Grounds for disciplinary action**

*(1) Subject to this Part, the Board may take disciplinary action in accordance with this Part against a licensed agent on one or more of the following grounds:*

*(c) the licensed agent has been guilty of a breach of the rules of conduct for agents;*

5. Applications for such action are made under Section 68

#### **68. Applications for disciplinary action**

*3) Any person may apply, by notice in writing lodged with the Registrar, for disciplinary action to be taken against a licensed agent on one or more of the grounds referred to in section 67. 3) Any person may apply, by notice in writing lodged with the Registrar, for disciplinary action to be taken against a licensed agent on one or more of the grounds referred to in section 67.*

*(4) Where –*

*(a) subject to subsection (5), an application for disciplinary action to be taken against a licensed agent is lodged in accordance with this section; or*

*(b) the Board considers that there may be grounds under section 67 for disciplinary action to be taken against a licensed agent,*

*the Board shall hold an inquiry.*

6. The Applicants relied on Section 65(1)(d) and (da) of the ALA to ground the Application.

**65. Rules of conduct**

(1) *A licensed agent who –*

*(d) fails to exercise due skill, care or diligence in carrying out his duties on behalf of his principal; or*

*(da) fails to exercise due skill, care or diligence when dealing with any person whomsoever in the course of conducting business as an agent;*

*is guilty of a breach of the rules of conduct for agents.*

7. In the event of the Board granting the applications, the Respondent may be dealt with as provided in section 69 of the Act.

**69. Powers of Board after inquiry**

*(1) Where, at the conclusion of an inquiry conducted pursuant to section 68(4), the Board is satisfied that it is authorised to take disciplinary action against a licensed agent, the Board may –*

*(a) reprimand or caution the agent;*

*(b) by notice in writing, impose a fine not exceeding 50 penalty units on the agent;*

*(c) by notice in writing, suspend the licence of the agent until the expiration of the period, or the fulfillment of a condition, specified in the notice; or*

*(c) by notice in writing, revoke the licence of the agent.*

**Conduct of the Matter**

8. The Board, having considered the Investigation Report previously, had determined that the only matters, raised in the Application, which fulfilled the requirements in section 68(4) and (5) for holding an Inquiry were allegations in respect of delay in releasing the Security Deposit held by the Respondents. The terms of the Inquiry were so limited and the Board and the Respondents proceeded on the basis of the Materials contained in the Report and e-mail correspondence between the First Respondent and the Investigator, John

Burdett, sent on the 9<sup>th</sup> May 2011 dealing with the Security Deposit. Mr Hope made submissions on behalf of the Respondents.

### **The Facts**

9. The First Respondent holds an unrestricted Real Estate and Business Agent's Licence, AL646, and, at all material times, was the nominated Business Manager for the Second Respondent, the holder of an unrestricted Real Estate and Business Agent's Licence AL456.

10. The Applicants became registered proprietors of Unit 2002 Pandanus Apartments, 23 Knuckey Street Darwin on 18<sup>th</sup> September 2008 (hereinafter called "the Premises"). On 8<sup>th</sup> October 2008 a residential tenancy agreement (hereinafter called "the Lease") was entered into between the Applicants and Cameron Ian Hird and Ann Marie Hird as Lessees. HomeHunters was nominated by the Lease as Managing Agent and, pursuant to the Lease, a Security Bond of \$3600 was paid by the Lessees to HomeHunters to be held in trust.

11. The Lease commenced on 13<sup>th</sup> October 2008 for a term of 12 months at a weekly rental of \$900. However, on 1<sup>st</sup> May 2009 Cameron Ian Hird advised HomeHunters that due to a change in employment circumstances, the Lessees could no longer afford to meet their obligations under the Lease and would move interstate to find employment. The premises were found to be abandoned on 13<sup>th</sup> May 2009, the rent having been paid until 10<sup>th</sup> May 2009.

12. On 10<sup>th</sup> June 2009, HomeHunters, having issued and served requisite notices under the *Residential Tenancies Act*, applied to the Commissioner of Tenancies for orders to terminate the tenancy, possession and compensation.

13. Despite efforts to relet the premises, no new tenants were found and on 9<sup>th</sup> July 2009, the Applicants terminated the Property Management Agreement. On 10<sup>th</sup> July 2009, keys for the Premises were collected by Ray White Property Management but no instructions were given as to transfer of the Security Bond. However, at the very least, the Applicants were entitled to the balance of the Security Bond, less payment of two small amounts for cleaning expenses, on the expiration of the term of the Lease on 12<sup>th</sup> October 2009 by which time the amount of unpaid rent far exceeded any compensation the Applicants may have received. The balance of the Security Bond was forwarded by cheque to the Applicants on 29<sup>th</sup> January 2010 following the making of a complaint by the applicants to the Real Estate Institute of Northern Territory

14. While the Board accepted that the Respondents did not receive timely instructions from the Applicants in respect of transfer of the Security Bond, it found that there was an unacceptable delay in dealing with the Bond. The termination of the Property Management Agreement did not end the

Respondents' obligations to act with due care and skill in relation to the Security Bond. It was not enough to wait for an extended period to be contacted by the Applicants. The Respondents' had a proactive duty to ensure that the monies held by them in trust be dispersed in an appropriate and prompt manner. The Board was satisfied that the Respondents' delay was a failure to act with due skill and care and diligence as required under Section 65(1) (d) and (da), amounting to a breach of the rules of conduct specified in that Section of the ALA.

15. Having determined that the Respondents had committed a breach of the rules of conduct in Section 65(1), the Board was authorised to take disciplinary action under Section 67(1)(c).

### **Determination**

16. In considering the nature of the disciplinary action to be taken against the Respondents, the Board considered submissions from Mr Hope on behalf of the Respondents. While the Board considered the breach of Section 65, in that the Respondents unduly delayed in forwarding the Security Bond to the Applicants, to be a relatively minor breach, the duty of care when dealing with Trust Monies is high and must be taken seriously. The Board also noted that the Applicants had suffered little financial disadvantage as a result of the breach and that the Bond had been accounted for in full once the matter was brought to the Respondents' attention.

### **Action**

The Board determined at the Inquiry held on 23<sup>rd</sup> May 2011, that it was satisfied that the Respondents, Timothy Cramond and Two Tone Pty Ltd, trading as HomeHunters Darwin, had committed a breach of the rules of conduct for agents that justified disciplinary action against them. In exercise of its powers under Section 69(1), the Board reprimanded the Respondents.

The Board also directed the Registrar to publicise this decision (omitting details of the names of the parties).

For the Board



Suzanne Philip  
Chairman