

**IN THE MATTER OF A DISCIPLINARY
INQUIRY PURSUANT TO THE
AGENTS LICENSING ACT NT 1979**

BETWEEN

**REGISTRAR OF LAND, BUSINESS AND CONVEYANCING
AGENTS**

Applicant

AND:

**JEREMY O'DONOGHUE, TRADING AS MOLARA PTY
LTD; FIRST NATIONAL REAL ESTATE O'DONOGHUES,
FIRST NATIONAL COMMERCIAL DARWIN**

Respondent

Date of hearing: 22 FEBRUARY 2023

Chairperson: Mr Mark Thomas

Consumer representative: Ms Lea Aitken

Departmental representative: Mr Robert Bradshaw

Appearances:

Counsel for Mr O'Donoghue: Mr Peter Maley, solicitor

Date of decision: 10 MARCH, 2023

STATEMENT OF REASONS FOR DECISION

PART A: INTRODUCTION

1. The Registrar of Land, Business and Conveyancing Agents applied, pursuant to s 68 of the *Agents Licensing Act 1979* (hereafter "The Act"), for disciplinary action to be taken against licenced real estate agent Jeremy O'Donoghue, (hereafter "JO"), who holds a licence in his name, that licence being real estate agents licence number 795/RBL, carrying on business at Molar Pty Ltd, 141 Mitchell St, Larrakeyah NT 0820; and secondly Molar Pty Ltd (Licence number 692/RBL), trading under the business names of First National Real Estate O'Donoghues and First National Commercial Darwin, carrying on business under the supervision and control of Jeremy O'Donoghue at 141 Mitchell St, Larrakeyah NT 0820. Both the individual and corporate licences expire on the same date: 28 November 2023.
2. The Registrar's Application, in its commencing paragraph, specifies that it seeks disciplinary action against Mr JO, who holds an individual licence and a licence as a body corporate, in the name of Molar Pty Ltd. It does not at that point refer to his

Auctioneer's licence, licence number 520/AUC, which is in force until 29 June 2023. The application is understood and treated as to be directed to the individual and corporate licences and not to the Auctioneer's licence.

PART B: GROUNDS OF APPLICATION

3. The Registrar's application is made pursuant to s 68(2) of the Act, which states that the Registrar may apply, by notice in writing, for disciplinary action to be taken against a licensed agent on one or more of the grounds referred to in section 67. The applicant refers, in its application, to the conditions of eligibility contained in Division 2 of Part III of the Act. Specifically, it refers to 20 of the Act, and in particular to "fit and proper person" as defined for the purposes of sections 22, 25 and 39 of the Act. Section 22 refers to the criteria applicable to the eligibility of a person for a grant of a licence. Section 25 refers to the criteria applicable to the eligibility of a company or firm for a grant of a licence. Section 39 refers to the qualifications applicable to an application to be registered as an agent's representative and is therefore irrelevant to this application¹. Consistent with s 20 being concerned with the conditions of eligibility for a grant of a licence, section 20(2)(a) refers to a basis of disqualification, if in the 10 years preceding the application, the person has, relevantly, been found guilty of an offence against the Misuse of Drugs Act. ²

Failure to meet conditions of eligibility in Div 2, Part III of the Act s 67(1)(k)

4. The first ground for disciplinary action is contained in section 67(1)(k) of the Act, which states:

The licensed agent does not meet the conditions of eligibility specified in Division 2 of Part III, which relate to the licence of the licensed agent, other than such conditions which the Board has, under the Act, waived

5. The conduct that is relevant to s 67(1)(k) is referenced in general terms in the particulars of the Registrar's written application, namely:

"that Mr JO was convicted of various offences under s 12 (1) of the Misuse of Drugs Act 1990 on 5 February 2022, refer to certificate of proceedings (underlining added)"

6. There are four errors in the particulars, (three of which are revealed by the certificate of proceedings).³ Firstly, s 12(1) of the Misuse of Drugs Act applied to only one of the five offences, namely, possession of a dangerous thing (ice pipe). There were four other offence provisions engaged, which were as follows:

¹ The respondent is not an agent's representative.

² Section 44 of the Act has also been referred to in the Registrar's written application. This refers to an application for disciplinary action against an agent's representative. It is irrelevant, given that the respondent is not an agent's representative.

³ The certificate of proceedings provides correct guidance regarding the first three errors. The fourth error is contained in the certificate itself.

- drive with dangerous drug in body (methamphetamine, amphetamine, cannabis and benzodiazepines - s 28(1)(a) Traffic Act;
 - Possess schedule 4 substance without authorisation- 39 of the Medicines, Poisons and Therapeutic Drugs Act ;
 - Possess Schedule 1 dangerous drug (methamphetamine) (5 grams) - s 7A(1) of the Misuse of Drugs Act;
 - Possess Schedule 2 dangerous drug (cannabis plant material) (30grams) - s 7B(1) of the Misuse of Drugs Act;
7. The second error was that the offender was not convicted but found guilty without conviction and given a good behaviour bond for 6 months. Thirdly, the finding of guilt was on 18 November 2022 not 5 February 2022. Finally, the certificate of proceedings contains an error as to the date of offending in counts 2, 3, 4 and 5. It says 5 February 2022 was the date of the commission of those offences, whereas it should be 5 August 2022 (according to the facts which were read on to the record in the Local Court).
8. In summary, the three offences under the Misuse of Drugs Act constitute the conduct relevant to s 67(1)(k) ground for disciplinary action

The second ground: Any other reasonable ground, which is sufficient to warrant revocation of the licence s 67(1)(m).

9. One of the two offences that were not offences under the Misuse of Drugs Act (and hence cannot be particulars of the first ground) is relevant to this ground. That is, driving with a dangerous drug in body (in breach of s 28(1)(a) of the Traffic Act. The other offence, which was possession of a substance in breach of s 39 of the Medicines, Poisons and Therapeutic Drugs Act, is irrelevant to both grounds and the matter more generally.
10. The commission of a criminal offence constituted by driving with four dangerous drugs in the person's body, is conduct that must concern reasonable members of the community. This Board is tasked with the responsibility of ensuring that real estate agents act in such a way that they do not undermine confidence in the real estate industry. This sort of misconduct clearly may do so. It is not trivial conduct - it concerns multiple dangerous drugs, including one that is generally recognised in the Courts in this country to have particularly destructive properties: methamphetamine. The nature and number of dangerous drugs are sufficient to potentially warrant revocation of the agent's licence. Hence, the offending conduct is appropriately encompassed by s 67(1)(m).
11. It is important to observe that s 67(1)(c) of the Act is not engaged. This provision refers to a breach of the rules of conduct for agents. Those rules do not refer to the commission of a criminal offence.

PART C: SUMMARY OF THE OFFENDING CONDUCT

12. The facts were read out in the sentencing proceedings and are specified at page 3 of the transcript of those proceedings. In short, Mr JO was stopped in his motor vehicle at about 10.39am for the purposes of a random drug saliva test. He tested positive to four drugs being in his body, which were methylamphetamine, amphetamine, cannabis and benzodiazepines.
13. Police arrested the respondent and took him to Palmerston Police station. After he tested positive for the four drugs specified above, he was then taken to his home for the purposes of the execution of a search warrant. During the course of the search warrant police found a glass pipe used for the administration of a dangerous drug, a clip seal bag containing 5 grams of methamphetamine, two separate grams of cannabis plant material on top of a gun safe, and finally a clip seal bag on top of the same gun safe (containing 28 grams of cannabis).

PART D: THE SENTENCING PROCEEDINGS IN THE LOCAL COURT

14. The sentencing Judge noted the prior good character, the very strong⁴ rehabilitative efforts, the “massive” wake-up call constituted by the court case, and the offender’s commendable work history. A section 8 order was made in respect to all five offences on the basis of the good character and rehabilitation efforts of JO. He was given a 6-month good behaviour bond and disqualified from driving for 3 months (for the s 28 (1)(a) offence).

PART E: THE INQUIRY ON 22 FEBRUARY 2023

15. Mr JO was represented by Mr Maley, solicitor. The following material was tendered in the inquiry the application for disciplinary action, the certificate of the Local Court proceedings, the transcript of the sentencing proceedings on 18 November 2022 before Judge Woodroffe, the outline of written submissions written by Mr Tippett KC, which was filed in the Local Court on behalf of the offender, and 7 character references. A psychological report from a Ms Ray was tendered, as well as a post-program progress report from Ms Jeske, psychotherapist of *Noosa Confidential*, Queensland, and a letter addressed to the Board from Mr JO. Additionally, written submissions were received by the Board from Mr Maley, which were supplemented by further oral submissions from him. Mr JO also addressed the Board.
16. Mr Maley submitted that it was important that Mr JO had undergone an extensive period of residential rehabilitation at *Noosa Confidential* (5 weeks from 2 Sept 2022 to 5 October 2022). The report of Ms Jeske, psychotherapist, stated that he had participated in all areas of the programme at *Noosa Confidential*, including a minimum of 5 psychotherapy sessions per week. She noted that following the completion of the residential programme that Mr JO has engaged with her as part of a 12-month after care programme, which consists of weekly sessions and check-ins.

⁴ His Honour described his efforts as being “massive” (p 8 of transcript of proceedings)

17. The residential rehabilitation programme had cost Mr JO no less than \$100,000. It was conducted with the knowledge and participation of his wife and family. It was submitted that the cost to Mr JO personally and professionally from the loss of his licence, should that occur through suspension, would be very great. He has no other employment alternatives. His business, which employs 20 people, is dependent upon him. It was submitted that if Mr JO lost his licence, others within the business would lose their jobs. Furthermore, it was observed that there was no other licensed person who could step up to act as branch manager in place of Mr JO. It was emphasised that Mr JO was a mature man with no prior convictions.
18. Regarding the offending conduct, Mr Maley submitted that it did not involve any of his staff or his clients or friends. However, those close to him could see that his health was deteriorating and that his self-referral to the residential rehabilitation programme at *Noosa Confidential* in Queensland was both timely, intensive and ongoing- with structures in place for 12 months, including therapy sessions.

PART F: THE BOARD'S FINDINGS

19. The offences of possessing methamphetamine, possessing the ice pipe and possession of cannabis plant material (all being offences under the Misuse of Drugs Act) provide the basis for the Board finding that the respondent has breached s 67(1) (k) of the Act, namely that the commission of these offences means that he does not meet the conditions of eligibility specified in Div 2, Part III of the Act. This is because these 3 drug offences would make the respondent ineligible for a licence due to s 20 (2)(a) & (1)(a) of the Act (which makes a person found guilty of an offence under the Misuse of Drugs Act a disqualified person and hence ineligible for a licence).
20. The offence of driving with dangerous drug in body (methamphetamine, amphetamine, cannabis and benzodiazepines) is not an offence under the Misuse of Drugs Act but rather under the Traffic Act. This offending is relevant to s 67(1)(m) of the Act. The Board finds that this offending is serious offending and that it would arouse considerable concern in the community due to the number of drugs in JO's body and the nature of those drugs (particularly methamphetamine). As a result of these findings, the Board finds that this offence constitutes conduct which is sufficient to warrant revocation of the agent's licence and hence breaches s 67(1) (m) of the Act.
21. The Board finds that the possession of the substance contrary to the Medicines, Poisons and Therapeutic Goods Act was irrelevant to either ground for disciplinary action.
22. The conduct of the agent in the commission of 4 criminal offences is of obvious concern to the Board. This is for a number of reasons, which include the number of dangerous drugs involved (four), and the fact that Mr JO was driving a motor vehicle with four drugs in his body. Further, one of the drugs was methamphetamine, which is a drug very well known to the Courts and the community for its addictive

properties and its capacity to cause ongoing addiction and to destroy careers, families and lives.

23. Ranged against these concerns is the fact that Mr JO, a mature man with no relevant prior convictions, was contrite in terms of his appearance before this Board. He provided no excuses for his conduct and did not seek to blame others. The Board is satisfied that he is genuinely remorseful for his criminal conduct. The Board takes into account that Mr JO pleaded guilty, that the offending conduct was on one day only, that the drugs were for his own use, and that there was no supply to others, and finally, that he voluntarily engaged in a residential rehabilitation programme at his own cost, which was substantial, sustained, and the treatment for which is ongoing. There was no connection between JO's offending conduct and the employees or work of his business. His offending did not directly affect the business. However, as the respondent acknowledged, due to the nature and extent of his underlying drug addiction, that was clearly having a deleterious impact upon his ability to manage the business at that time.
24. Ms Georgia Ray, psychologist, provided a useful report. She made two diagnoses- one of Drug Use disorder and the second of ADHD. Ms Ray stated that despite JO's progress since attending Noosa Confidential that:

"It has been strongly recommended that he continue to undergo regular individual psychological therapy sessions until the psychosocial stressor of his legal situation subsides..... In my opinion it is in Mr JO's best interests to engage in regular non-residential psychological therapy for a minimum period of 6 months whilst abstaining from alcohol. This ongoing therapy would allow Mr JO the opportunity to receive appropriate interventions which would be most advantageous to Mr JO's mental health and general well-being."

25. Ms Ray's concerns expressed immediately above are of the utmost importance. It is clear from her opinion that ongoing psychological therapy for a considerable period of time is required. Ms Jeske's report is also consistent with the concerns expressed by Ms Ray, and the means to deal with them.
26. A further matter that the Board must take into account is the number and the quality of the character references submitted on behalf of Mr JO. They are, in general terms, of assistance to the Board in providing a useful insight into the character of Mr JO. Some are particularly noteworthy- for example, Mr Andrew Bruyn, who points out that *"that if he (JO) ever reneges on his commitment to me and many other friends, he knows the consequences are beyond cost- and as a man who's job rests upon monetary values, that's a language he understands."* This comment cogently articulates a matter that is at stake for Mr JO, namely the loss of friendship of long-standing friends, should he not follow through on his commitment to drug rehabilitation. Ms Diane Davis, President of REINT NT, also speaks favourably of Mr JO and points out that he is one of the best real estate professionals in Darwin. It is noteworthy that some of the referees speak of very long-standing friendships, e.g. Mr Jon Sieben and Ms Rothall, which is to Mr JO's credit in a general sense.

- 27.** It should be made clear that Judge Woodroffe’s decision to deal with the matter without conviction is not of itself a determinative factor in how the Board deals with this matter -as the Act appears to focus more upon the finding of guilt: see s 20(2)(a) (in the context of an application for a licence). However, the Board must take into account that Mr JO was dealt with relatively leniently by the Local Court and the reasons why. Those reasons focus upon his prior good character, the quality of his character references, and perhaps most of all, his voluntary participation in the residential rehabilitation programme. In summary, the Local Court’s disposition (and its reasoning) provides some guidance in general terms as to how this Board may deal with him, although its comparative leniency is in no way binding upon it.
- 28.** The Board is mindful of the impact that the loss of Mr JO’s real estate licence would have upon not only him personally (with JO having no real employment alternative), but also members of the company that he runs, and the probable loss of staff. All of these matters are of importance, as is the fragile nature of the real estate industry in Darwin. Against that, however, is the vital importance of the maintenance of the general public and consumer’s confidence in the real estate industry and those that practice in it. That consideration remains of the first importance for the Board in its deliberations as to the nature of the penalty to be imposed upon Mr JO.
- 29.** The fact that there is presently no replacement for branch manager should Mr JO be away from the office is of concern to the Board. At this point Ms Stenberg is not qualified to step up to that position. That is a problem, as amongst other things, it provides added pressure and stress upon Mr JO. It is of importance that Mr JO should take steps to ensure that somebody be able to step up to the role of branch manager, if and when he is away. This should be done as soon as reasonably practicable.
- 30.** In summary, the decision of the Board as to the nature and terms of disciplinary action in this case is not without difficulty. There are multiple competing concerns. The maintenance of confidence in the real estate industry must be borne steadily in mind by the Board. This is not the first time that a person in control of a substantial business, or a professional person, is afflicted by a drug addiction which is debilitating. Importantly, there are structures that can be put in place in Mr JO’s case that can manage his recovery (in communication with the Registrar), that strive to ensure that real estate consumers and the public more generally are adequately protected. There is a strong public interest which corresponds with JO’s personal interest in his complete rehabilitation which permits him to retain his licence and his livelihood. He has made good progress but it is vital to ensure that this continues. It should be added that but for Mr JO’s prior participation in the residential rehabilitation programme and his ongoing participation with treating professionals engaged in it, that the outcome of this matter may have been different.
- 31.** Finally, as was raised during the course of this inquiry, the Board notes that both Mr JO’s personal licence and his corporate licence come up for renewal on 28 November 2023. The findings of guilt in the Local Court raise matters that will affect the [presumed] application for a grant of those licences then. Now is not the time for

Board to deal with those matters but it is important that Mr JO is on notice that the dates of the expiration of his current licences will be coming up relatively soon.

PART G: - SANCTION

32. The Board is satisfied, pursuant to s 69(1), that it is authorised to take disciplinary action against Mr JO, both in relation to his personal licence and the corporate licence -given that the corporate licence states that Molar Pty Ltd carries on business under the supervision and control of Mr JO.
33. As noted about the Board found that there has been conduct that is sufficient to warrant revocation of the licences. Despite such a finding the Board in determining the appropriate penalty under section 69 is not obliged to revoke the licence. Rather the Board must determine which of the sanctions in section 69 is appropriate in the circumstances.
34. The Board considers that it is appropriate in all the circumstances of this case to impose a **REPRIMAND upon Mr JO regarding both his individual licence and the corporate licence.**
35. In coming to its decision, the Board has considered the seriousness of Mr JO's actions and the need to deter other real estate agents from acting in the same or similar manner as the most weighty matters in formulating a sanction that would further the aims of community protection and maintaining confidence in the real estate industry.
36. Pursuant to section 69(3) of the Act the Board has the power to direct the licensed agent to take or to refrain from taking a specified action within such time as the Board in that notice shall specify. Consistent with this reasoning previously referred to, and, in particular, the concerns referred to above of Ms Georgia Ray, psychologist, and Ms Karen Jeske, psychotherapist, the Board has determined to impose the following directions to Mr JO in respect to both his individual licence and the corporate licence. Those directions are as follows:
 - (1) That, for a period of no less than 9 months, from 27 February 2023, Mr JO is to maintain a therapeutic relationship with his treating psychotherapeutic practitioner, Ms Karen Jeske, and comply with all reasonable guidance and directions issued by that practitioner;
 - (2) That a written report from his treating practitioner, Mr Karen Jeske, be provided to the Registrar of Lands, Business and Conveyancing Agents (the "Registrar") every 3 months which outlines Mr JO's progress and compliance, and, in the event of a relapse, provides a report to the Registrar, as soon as practicable, which notifies the Registrar of that relapse and Mr JO and the practitioner's response to it;

- (3) That Mr JO use his best endeavours to employ somebody in his business who will be able to take on the role of Branch Manager during any period of time that Mr JO is away from his business or is otherwise inconvenienced;
- (4) That by 27 March, and every 3 months after this date, JO provide a written report to the Registrar which states his progress regarding ensuring compliance with condition 3 above;
- (5) That in the event that Ms Karen Jeske is not available or leaves her position as a psychotherapist at *Noosa Confidential*, that Mr JO notify the Registrar, as soon as practicable, of this;
- (6) That if Ms Jeske leaves the employment of *Noosa Confidential* during the next 9 months, that Mr JO engage with *Noosa Confidential* to ensure that another suitably qualified practitioner be appointed in place of Ms Jeske as soon as practicable;
- (7) That Mr JO be of good behaviour and not commit any further offences.

PART H: RIGHT OF APPEAL

37. Section 85 of the Act provides that a person aggrieved by a decision of the Board can appeal to the Local Court.

38. An appeal application must be made within 21 days of the date of this decision.

DATED: 10 MARCH, 2023 AT DARWIN

Mark Thomas

MARK THOMAS,
CHAIRPERSON
AGENTS LICENSING BOARD OF THE NORTHERN TERRITORY