

**IN THE MATTER OF AN INQUIRY  
PURSUANT TO Ss 44, 65, 67, 68, 69 & 77  
OF THE *AGENTS LICENSING ACT 1979*  
INTO AN APPLICATION FOR  
DISCIPLINARY ACTION**

APPLICANT:	MATTHEW LIET
FIRST RESPONDENT:	ALICE SPRINGS REALTY PTY LTD
SECOND RESPONDENT:	ANDREW JOHN HENDRIKS
THIRD RESPONDENT:	TONI LEE ROWAN
DATE OF BOARD MEETING:	4 JULY 2023 (at 1.00pm)
Deputy Chairperson:	Gabrielle Martin
Alternate Member:	Lea Aitken
Alternate Member:	Joseph Kuhn
Counsel Assisting:	Tass Liveris
Counsel for the Respondents:	Alison Phillips
Appearances:	Andrew John Hendriks Toni Lee Rowan
Support staff:	Marita Cabot Deputy Registrar Land Business and Conveyancing Agents  Laine Cornish Senior Board Support

**STATEMENT OF REASONS FOR DECISION**

**BACKGROUND**

1. This matter concerns an application for disciplinary action pursuant to Ss.44(7) & 68(3) of the *Agents Licensing Act 1979* ("the Act"), ("the Complaint") by Matthew Liet ("the Complainant"). It was lodged on 19 November 2021.
2. At all material times:
  - a. Alice Springs Realty Pty Ltd (ASR) was the holder of licence number REI1326 and was licensed to carry on business as an agent under the Act, having first held a licence since 7 April 2021;
  - b. Andrew John Hendriks (Mr Hendriks) was the holder of licence number REI1325, the sole director of ASR and was licensed to carry on business as an

- agent under the Act, having first held a licence since 7 April 2021;
- c. Toni Lee Rowan (Ms Rowan) was an agent's representative RAR1165, having first held a licence since 18 April 2017;
  - d. Sonia Donnelly was the Vendor (the Vendor) of the property at 11 Range Crescent, Alice Springs (the Property);
  - e. ASR was the Vendor's sales agent for the sale of the Property;
  - f. The Vendor was personal friends with Mr Hendriks and Ms Rowan;
  - g. The Complainant (Matthew Liet) was the Buyer of the Property; and
  - h. Mr Hendriks and Ms Rowan (collectively "the Agents") were in a relationship at the relevant time.
3. The Inquiry had the benefit of the Investigation Report of Erin Cassidy, Senior Compliance Officer, Business and Workforce, Engagement and Delivery (the Investigator)<sup>1</sup>. The Investigator obtained additional information from the Complainant. She provided the Complaint to Mr Hendriks and Ms Rowan and received additional information from them.
  4. The information below (paragraphs 5 to 34) is drawn from the Investigation Report.
  5. On 10 August 2021, the Complainant and his wife attended the Property prior to entering into the contract. They initially raised the conditions of the carpets and the air-conditioner. The Complainant was advised by the Agents that the owners would be replacing the carpets, paint touch ups would be done and the premises power cleaned.
  6. The Complainant requested a building inspection report from the Agents.
  7. On 10 August 2021, Mr Hendriks notified the Vendor of the Complainant's first offer of \$900,000.00. She rejected that offer.
  8. The Complainant organised his own building inspection and report.
  9. On 12 August 2021, Mr Hendriks notified the Vendor of the Complainant's second offer of \$915,000.00. She rejected that offer.
  10. On 13 August 2021, the Complainant was advised by the Agents there were other offers on the Property, however the Agents would not tell him what the offers were.
  11. The Complainant again requested building inspection reports from the Agents. The Complainant alleges he was told by the Agents in a phone call on or around 13 August 2021 that a building inspection had already been completed and no issues were found.
  12. On 15 August 2021, the Complainant and his wife emailed Mr Hendriks and made two offers to the Vendor to purchase the Property in the following terms:
    - a. An unconditional offer in the sum of \$930,000.00 (Understandably still pending building and other inspections (Electrical, Pest, Plumbing and Air-conditioning) for issues we haven't seen on the naked eye inspections; and
    - b. A conditional offer in the sum of \$940,000.00, with the conditions relating

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<sup>1</sup> S.77(9) of the Act, the Board is not bound by rules of evidence but may inform itself in such manner as it thinks fit.



to repairs and maintenance (identified by the Complainant and his wife during inspections of the Property),

As mentioned in the two inspections, carpets in the 3 bedrooms replaced to match the stairs and master bedroom & the painting that was to be done.

- Ensuring lighting are all working (light out above kitchen sink and stair way to garage light is completely missing and doesn't match the lighting in the remainder of the house).

- Servicing of air-conditioners/swampies. And understandably still pending building and other inspections (Electrical, Pest, Plumbing and Airconditioning) for issues we haven't seen on the naked eye inspections.

We are removing the love and lust we had for the property, given this will ultimately be at least a 1.5 million dollar purchase for us we have to be calculated. We would otherwise now consider other options if the above doesn't quite work for the owners.

13. In making the Offer, Mr Hendriks noted that the Complainant said he removed the notion of the incomplete works by Nicholls Constructions at the Property (former renovator of the Vendor) and that the Complainant would conduct those repairs and amendments, along with other identified issues beyond those mentioned to be repaired during the inspections.
14. Mr Hendriks emailed the offer to the Vendor on the same day.
15. On 19 August 2021, Mr Hendriks sent the Complainant and his wife a Contract of Sale (Contract). There were terms of the Contract, including:
  - a. Purchase price of \$930,000.00;
  - b. The Buyer has not relied on any representations of the Seller or the Seller's agent to enter into the Contract;
  - c. The Buyer obtaining at the Buyer's expense, a pest report, a condition report, a building status report, a plumbing report, an electrical report, gas fittings certificate of compliance and a sacred sites certificate; and
  - d. A special condition that "All works completed by Nicholls Constructions will not be negotiated, evaporative air conditioning service will not be attended to, all other findings from the building inspection will not be attended to. Smoke alarms will be made compliant to current legislation. A full clean will be attended to of the Property including garden and yard maintenance prior to settlement."
16. On 19 August 2021, the Contract was executed by the parties.
17. The Complainant received the Building Report on or around 8 September 2021. The report identified five non-approved alterations to the Property. There was also water damage caused to the Property by the gutters not being cleaned and blocked drainage points and there were numerous issues found during the electrical and building inspections.
18. Pre-settlement inspections occurred on 18 October 2021, 25 October 2021 and 26 October 2021.



19. Prior to the Contract becoming unconditional and prior to settlement, a dispute between the Complainant and ASR arose in relation to the Contract, particularly the Special Condition. The dispute included:
  - a. The special condition that a full clean will be attended to prior to settlement, with the Complainant alleging that the Property had not been cleaned; and
  - b. Issues arising from the reports obtained by the Buyer, particularly in relation to five constructions identified as not being certified, a missing down pipe, pest treatment and electrical works.
20. On 25 October 2021 and 26 October 2021, the conveyancing agents for each party discussed the cleaning concerns raised by the Complainant and his wife by e-mail.
21. The Agents claimed the Property was unconditional on the evening of the first of the two pre-settlement inspections (ie 18 October 2021).
22. The Vendor agreed to engage an independent cleaner to attend the Property and address a number of, but not all, of the concerns raised by the Complainant.
23. It was later asserted by the Agents that, as the Property had gone 'unconditional' at that time, the Vendor was not required to do any further work at the Property.
24. On the day prior to settlement, it became obvious that the Vendor had not completed anything she agreed to do, even leaving clothes in the wardrobes.
25. On 27 October 2021, the Property was settled.
26. The Property was not cleaned prior to the handover and no keys were provided.
27. The Complainant said he had to have 17 locks re-keyed.
28. On 10 November 2021, the Complainant lodged proceedings in NTCAT against the Vendor seeking compensation for missing television brackets, the cost of lock rekeying, cleaning costs and water damage as a result of blocked gutters.
29. That was the same day Ms Rowan and Mr Hendriks emailed and phoned the Complainant (see paragraphs 39c to 39n below).
30. On 19 November 2021, the Complainant lodged an application for disciplinary action (ie the Complaint) against Mr Hendriks and Ms Rowan.
31. On 10 December 2021, a copy of the Complaint was emailed to Mr Hendriks and Ms Rowan.
32. On 19 December 2021, the Vendor confirmed that "all offers were presented to me by [Mr Hendriks], Offer 1. \$900,000 on 10/08/21, Offer 2. \$915,000.00 on 12/08/21 and the UNCONDITIONAL OFFER of \$930,000 or alternately a CONDITIONAL OFFER of \$940,000". She accepted the unconditional offer. (The Board notes that the Vendor does not mention any of the other offers by other bidders as alleged by Mr Hendriks).
33. The Complainant provided the Investigator a voice recording from 13 August 2021 of a conversation he had with Ms Rowan and Mr Hendriks. The conversation occurred before an offer was made to purchase the Property. In that discussion, the Complainant was informed that the price for the Property would be in the \$950,000.00 range and there was discussion about other matters such as repairs.
34. On 14 April 2022, NTCAT determined the Complainant's application and dismissed



it with no order as to costs.

## **MATTERS TO BE CONSIDERED BY THE INQUIRY**

35. A document called “Matters to be inquired Into” was prepared by the Registrar, Land Business and Conveyancing Agents and sent to ASR and the Agents. On p.3 under the heading “B Matters to Be Inquired Into”, paragraphs 11 to 17 only focus on:
- a. The conduct of ASR, Mr Hendriks, and/or Ms Rowan in relation to;
    - i. Communications (phone calls and text messages) between the Complainant and Ms Rowan on or around 10 November 2021;
    - ii. Communications (phone calls) between the Complainant and Mr Hendriks on or around 10 November 2021;and
    - iii. Ms Rowan allegedly recording and publishing the phone calls on the net;  
(see paragraphs 39c to 39n, below)
  - b. Whether the Respondents have breached any of the rules of conduct for agent’s representatives<sup>2</sup>, agents<sup>3</sup>, particularly Rule 5(a)<sup>4</sup>, Rule 11<sup>5</sup> and Rule 12<sup>6</sup>;
  - c. If any of the allegations are established<sup>7</sup>, the Board may take disciplinary action under s.44(1)(b), s.67(1)(c) of the Act and may take any one or more of the actions set out in s.69(1) of the Act.
36. Unfortunately, the “Matters to be inquired Into” document does not detail other conduct identified by the Complainant in his Complaint, namely the issue of Ms Rowan holding herself out as a real estate agent, “numerous offers higher” than the Complainant’s offer, the alleged existence of a Building Report which said that there were no issues with the Property (in contrast to the Complainant’s Building Report which did find issues in the Property), and alleged slanderous name-calling of the Complainant and his wife (see paragraph 39r to 39w, below).

## **THE COMPLAINT**

37. On 19 November 2021, the Complainant applied for disciplinary action to be

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<sup>2</sup> S.44 of the Act provides that disciplinary action may be taken when an agent’s representative acts in a manner that, had the agent’s representative been a licensed agent, would have been in breach of the Rules of Conduct;

<sup>3</sup> Prescribed under regulation 25 and Part 1, Schedule 4 of the Agents Licensing Regulations 1979 (Rules of Conduct).

<sup>4</sup> A failure to have due regard to and comply with rules of real estate practice published or approved by the Real Estate Institute of the Northern Territory (REINT) (Code), being a failure to uphold the honour and dignity of the profession and not engage in any activity that may bring the profession into disrepute and, in particular, conduct business and personal activities in compliance with the Code and Legislation

<sup>5</sup> A failure to exercise due skill, care and diligence in carrying out the agent’s duties on behalf of a client

<sup>6</sup> A failure to exercise due skill, care and diligence when dealing with any person in the course of conducting business as an agent.

<sup>7</sup> In occupational disciplinary matters it is well established that the Board must reach a comfortable level of satisfaction in finding the matters proved on the balance of probabilities, consistent with the seriousness of the allegations and reflecting the serious consequences of any finding: *Briginshaw -v- Briginshaw* [1938] HCA 34; (1938) 60 CLR 336 at 362.



taken against Ms Rowan and Mr Hendriks concerning the sale of the Property. The Complainant and his wife entered the contract on 19 August 2021. The price paid for the Property was \$930,000.00.

38. The Complainant did not appear in the Inquiry.

39. The Complainant alleged the following in his Complaint and in information provided to the Investigator:

- a. The Complainant lodged the NTCAT application on 10 November 2021;
- b. Early on 10 November 2021, the Complainant contacted the Vendor informing her that he had lodged an NTCAT application against her;
- c. He received an email from Ms Rowan on 10 November 2021 commencing at 18.54. She requested he confirm the phone number as his primary contact number and email address, and provide the contact details for his lawyer. (The Board notes that neither Ms Rowan nor Mr Hendriks were respondents in the NTCAT application);
- d. He said he was "surprised" to hear from her due to the completion of their house purchase and settlement on the 27 October (14 days prior). He also asked for the reasoning behind her request.
- e. Ms Rowan replied and said that they needed to respond to allegations in writing;
- f. The Complainant received a further six emails from Ms Rowan in the next 26 minutes;
- g. The Complainant called Mr Hendriks as he wanted to confirm that he knew about all the text messages being sent by Ms Rowan;
- h. During the phone call,
  - i. Mr Hendriks and Ms Rowan spoke about the NTCAT proceedings against the Vendor;
  - ii. Ms Rowan said to the Complainant, "the gutters aren't part of the clean"; and
  - iii. When the Complainant told them it took 16 hours to clean the kitchen, Ms Rowan said, "You're fucking kidding me, it was not fucking filthy, it did not take you 16 hours to clean";
- i. Mr Hendriks hung up on the Complainant;
- j. The Complainant recalled Mr Hendriks who accused the Complainant of harassment;
- k. Mr Hendriks told the Complainant he was a "pain the arse" and was hurting his head;
- l. Ms Rowan threatened to contact the Complainant's boss and former boss;
- m. Ms Rowan threatened to live stream their conversations on Facebook, so they would go viral on the internet;
- n. After the last of the phone calls, there were three more text messages from Ms Rowan. They said
  - i. "You're going viral now on facebook"
  - ii. "We love unapproved tapped (*sic*) conversations" and
  - iii. "And I've got your wife on tape when you came through the first time saying she "hates her Aunty, the bitch!" "Happy to play that to her aunt";
- o. The communications from Ms Rowan and Mr Hendriks on 10 November 2021 had the effect of harassing and abusing the Complainant and his wife;
- p. Ms Rowan also wrote, "*I have attached screen shots of this conversation to*



*the email. I also am lodging a police report in regard to the unauthorised recording of my partner and I when we first viewed the property as mentioned in the last message”;*

- q. The Complainant said he received “multiple calls from both Mr Hendriks and Ms Rowan which were abusive;
- r. In this sale of property transaction with the Complainant, and allegedly other transactions with other people, Ms Rowan continued *“to portray herself as a real estate agent”*;
- s. During the negotiations for the Property, the Complainant was told that there were other buyers interested in the Property and that nobody had offered over \$900,000.00. When the Complainant put in the offer of \$900,000.00, it was rejected. He was told that “numerous offers” higher than this had been put in previously and rejected”. He was told that he would have to put in a bid closer to the requested price ;
- t. Mr Hendriks alleged a building report had been prepared for the Property and there were no issues.
- u. The Complainant arranged for a building inspection which reported five construction issues with the Property;
- v. The Complainant was called “stupid” for listing all the problems he found in the Property;
- w. The Complainant was called “selfish” for listing all the problems he found in the Property.

## **RESPONDENTS’ RESPONSE**

- 40. The Inquiry heard from Mr Hendriks and Ms Rowan who attended via an audio-visual link.
- 41. They were represented by Alison Phillips. She submitted that the Agents agreed to the facts as detailed at paragraphs 11 to 17 in the document titled “Matters to be Inquired Into”. (IAs indicated above, these are the equivalent of the allegations detailed at paragraphs 39c to 39n, above.)
- 42. The Agents provided information to the Investigator. Mr Hendriks provided a number of emails and a statement from the Vendor. Ms Rowan provided copies of text messages and a statement. After the hearing, the Agents provided a number of personal references and evidence of community charity work undertaken by them.
- 43. Ms Rowan agreed that she contacted the Complainant as alleged and said that she did so because she was considering taking legal action against him.
- 44. Ms Rowan stated that, on 10 November 2021, she was at her “wits end and overacted completely and unprofessionally towards the Complainant”.
- 45. She apologised unreservedly for her poor judgment.
- 46. In response to being provided the Complaint, Mr Hendriks said in an email to the Investigator, (20 December 2021) that he had spoken to Ms Rowan and said this is not to happen again.
- 47. Through his lawyer, Mr Hendriks admitted the alleged conduct in the Matters to be Inquired Into (ie at paragraphs 39, h, i, j and k above).



48. He also said that towards the end of the sale of the Property, it was quite clear to him that Complainant became quite emotional. All correspondence from him was replied to in a timely and professional manner. This included giving the Complainant and his wife a gift at settlement via his conveyancer and a text from Mr Hendriks, once the Property had settled, wishing him and his wife all the best in their new home.
49. In relation to the allegation that the Complainant's offers were not presented to the Vendor, Mr Hendriks said that it was not true.
50. The Complainant's \$900,000.00 offer was presented by Mr Hendriks by phone and the next two were in writing to the Vendor.
51. Mr Hendriks said that they were quite shocked and surprised to receive the Complaint from the Investigator because ASR has a very good name in the industry. They were also disturbed and concerned to read that they had been taped without their knowledge by the Complainant.
52. Mr Hendriks provided an email dated 19 December 2021 from the Vendor confirming the provision of all offers to her, and her good opinion of his dealings in the sale stating that he had kept her informed honestly, openly and professionally at all times. The Board notes that, even though the Vendor referred to "all offers", the offers she received from Mr Hendriks were only from the Complainant, not the other prospective Buyers.
53. On 16 March 2022, the Complainant's claim for compensation was heard by the NTCAT and it was dismissed on 14 April 2022 with no order as to costs. The Board did not have the benefit of that Decision.
54. Notably, there was no documentary proof of the Building Report, allegedly obtained by Mr Hendriks, provided to the Board or the offers of other prospective Buyers for the Property on which Mr Hendriks relied when he told the Complainant there had been "numerous higher offers" received and presumably forwarded to the Vendor.

## **LEGAL PRINCIPLES**

55. In conducting an inquiry, the Board is not bound by the rules of evidence and may inform itself in such manner as it thinks fit. In occupational disciplinary matters, an issue needs to be proven to the reasonable satisfaction of the decision-making body, having regard to the seriousness of the allegation made, the inherent unlikelihood of an occurrence of a given description (or the inherent improbability of an explanation), or the gravity of the consequences flowing from a particular finding.
56. Disciplinary proceedings are proceedings *sui generis*. Civil proceedings are generally brought to protect and enforce private rights and seek compensation and damages for wrongs and the object of criminal proceedings is to deter and punish the commission of crimes. The purpose of disciplinary proceedings is to maintain proper ethical and professional standards, primarily for the protection of the public, but also for the protection of the profession.
57. Relevantly, s65 of the Act "Rules of Conduct" provides:



1. A licensed agent must not breach the rules of conduct.
  2. A licensed agent who attempts to do an act the doing of which would be a breach of the rules of conduct for agents, or agents of a class of which he is one, is guilty of a breach of the rules of conduct for agents.
  3. Where a licensed agent who carries on business as a member of a firm contravenes or fails to comply with a provision of Part V, each licensed agent who is a member of the firm shall be deemed to be guilty of the contravention of, or failure to comply with, that provision.
  4. A company or firm is guilty of a breach of the rules of conduct for agents if:
    - a. the company or firm is a licensed agent acting on behalf of a client; and
    - b. a director or employee of the company or firm does an act, or fails to do an act, or attempts to do an act, the doing of, or the failure to do, which would, if the director or employee were a licensed agent, make the director or employee guilty of a breach of the rules of conduct for agents.
58. Section 65(1) to (3) of the Act provides a formula upon which licensed agents are dealt with if they breach the Rules.
59. The purpose of imposing a penalty in this kind of disciplinary proceeding is to protect the community and the welfare and reputation of the real estate industry. Insofar as the aspect of deterrence is concerned, a penalty may be used deter the offender (specific deterrence) or other people (general deterrence) from committing offences of the same or a similar character.

## AGENTS' DUTIES

60. In carrying out duties on behalf of a client, an agent is required to exercise such skill, care and diligence as is usual or necessary for the ordinary or proper conduct of the business or profession in which they are employed, or is reasonably necessary for the proper performance of the duties undertaken by them<sup>8</sup>.
61. The terms "skill", "care" and "diligence" are not defined in the Act. However, in *Re Whittles*, the Board applied dictionary definitions, specifically "the ability to do something well; expertise", "serious attention or consideration applied to doing something correctly or to avoid damage or risk" and "careful and persistent work or effort", respectively<sup>9</sup>.
62. The "Real Estate Code" is designed to assist and guide members of the REINT in their conduct with the public and other members of the real estate profession. Although it is voluntary, the Code seeks to set boundaries of acceptable conduct in real estate practice and determine minimum standards of behaviour expected of members, with the objectives being to encourage compliance with legislation and ethical conduct.
63. Under the Code, a member should uphold the honour and dignity of the profession and not engage in any activity which may bring the profession into

<sup>8</sup> *Re Whittles* at [66] – [67], citing *Georgieff -v- Athans* (1981) 26 SASR 412 at 413.

<sup>9</sup> At 72.



disrepute. In particular, a member should conduct business and personal activities in compliance with the Code and legislation.

64. Where a dispute arises between members of the real estate profession, or between a Client/Customer (but not a non-member practitioner) and a member, the parties should seek to resolve the matter in a professional and amicable manner<sup>10</sup>. In other words, a member must avoid the use of rude and inappropriate language in dealings with other members, clients and staff.
65. A member should not exaggerate, misrepresent or conceal relevant facts regarding a transaction of which they are aware<sup>11</sup>.

## FINDINGS

66. Ms Rowan admits to her unprofessional conduct on 10 August 2021 (see paragraph 39 c to 39 n) which comprises:
  - a. her unprofessional phone and email communications with the Complainant;
  - b. recording the phone calls;
  - c. threatening to publish the phone recording; and
  - d. threatening to contact the Complainant's current and past employers.
67. It is clear from the evidence above that Mr Hendriks' communications with the Complainant on the same day were also unprofessional (see paragraphs 39 h, i, j and k).
68. What is of concern is that Mr Hendriks was Ms Rowan's manager at that time and he did nothing to warn or stop her unprofessional conduct but he actively participated in it.
69. The Complainant provided a copy of the Building Report which he arranged. The Report upholds his allegation that there were five non-approved alterations to the Property.
70. ASR's Building Report, if one existed, was not in the Inquiry Book. There were, however, reports from 2015 and 2016 but no proof of a building inspection conducted just prior to the sale of the Property.
71. The Board finds, on the balance of probabilities, that Mr Hendriks did not obtain a Building Report and concealed that fact to the Complainant, and further, misrepresented the real situation by stating there were "no issues" in the alleged Building Report.
72. Further, the Contract states at Note 8:
  - e. If the Seller does not wish to attach a Building Status Report to the Contract, a special condition must be inserted into Item R of the reference schedule to make it clear that clause 12 does not apply.
73. Clause 12 of the Contract of Sale provides:
  - 12.1 The Buyer agrees to accept the property subject to any non-compliance with the

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<sup>10</sup> The Code p.9 under "Dispute Resolution"

<sup>11</sup> The Code p.7 under "Disclosure"



requirements of the Building Act, Building Regulations and all codes adopted under the Building Act and Building Regulations disclosed in the status report of the property attached to this Contract.

12.2 The Seller warrants that the improvements included in the property have not been altered since the date of the status report attached to this Contract.

74. There was no such clause stated in Item R of the reference schedule to make it clear that clause 12 did not apply in this Contract.
75. On the evidence before the Inquiry, the Board finds on the balance of probabilities that ASR did not receive any other offers on the Property and it is likely that Mr Hendriks misrepresented to the Complainant that there were higher bids which resulted in the Complainant raising his offer from \$900,000.00 on 10 August 2021 to \$940,000.00 on 15 August 2021. It is noted that the Vendor accepted the unconditional offer of \$930,000.00 on the same day.
76. In regard to the allegations of name calling (ie "stupid" and "selfish"), the Complaint does not identify an offender and there is no corroborative evidence of that kind of offence taking place. The Board finds that the allegations are unsubstantiated.
77. In regard to the allegation of Ms Rowan "holding herself out" as a real estate agent, there was no documentary evidence provided in support of that allegation. The Board finds that allegation unsubstantiated.
78. It would be procedurally unfair to take into account in this Inquiry Mr Hendrick's conduct in relation to the Building report, the Contract of Sale not addressing that fact and the alleged "higher bidders" and inducement to make higher offers because they were not issues raised in the "Matters to be Inquired Into" document.
79. However, as the sole director of ASR, Mr Hendriks' conduct in relation to his management of the situation with Ms Rowan's phone calls and text messages on 10 November 2021, and his conduct during the phone calls with the Complainant on the same day, is so far below the standard expected of a real estate agent that it warrants a significant penalty.
80. The Board notes that Ms Rowan admitted her unprofessional conduct on 10 August 2021 at the earliest possible time in her statement to the Investigator.
81. The Board notes the numerous favourable references for each of Mr Hendriks and Mr Rowan regarding prior real estate dealings and their charity work.
82. The Board finds that the matters set out above at paragraph 39c to 39n, constitute:
  - a. A failure by Alice Springs Realty, Mr Hendriks and Ms Rowan to exercise due skill, care and diligence in carrying out the agent's duties on behalf of a client, contrary to s.65 of the Agents Licensing Act and regulation 25 and Part 1, Schedule 4, rule 11 of the Agents Licensing Regulations 1979.
  - b. A failure by Alice Springs Realty, Mr Hendriks and Ms Rowan to exercise due skill, care and diligence in carrying out the agent's duties when dealing with any person, contrary to s.65 of the Agents Licensing Act and regulation 25 and Part 1, Schedule 4, rule 12 of the Regulations;



83. It is well recognised that a reprimand is not a trivial determination which for a professional person, has the potential for serious adverse implications<sup>12</sup>.
84. In *Victorian Legal Services Commissioner -v- Hyatt* [2018] VCAT 1498, Vice-President Judge Hampel observed that;  
A reprimand is a powerful statement to the practitioner of how far below the standard of their profession they have fallen by their misconduct. It is in that sense a more personal sanction than an imposition of a fine, or suspension or disqualification from practice.  
Fine, suspension or disqualification affect a practitioner's livelihood. A reprimand goes to their personal integrity.
85. The conduct set out in paragraphs 39 c to 39 n, above, in general, is conduct which falls short of the minimum standards of behaviour expected of real estate practitioners under the Code, conduct which brings the profession into disrepute and is conduct that lacks the skill, care and diligence that is usual and necessary for the ordinary and proper conduct of the business of a real estate professional.
86. The Board is satisfied that Alice Springs Realty Pty Ltd is a licensed agent which was acting on behalf of the Vendor and that it failed to exercise due skill, care and diligence in carrying out duties on behalf of the Vendor<sup>13</sup>.
87. In doing so, the honour and dignity of the profession was not upheld<sup>14</sup>.
88. The Board notes that under s44(1)(d) of the Act, if an agent's representative, as Ms Rowan was at the relevant time, acted in a manner that, had she been a licensed agent would have been in breach of the rules of conduct, the Board may take disciplinary action against her.
89. The Board is satisfied that Mr Hendriks and Ms Rowan failed to exercise due skill, care and diligence in carrying out duties on behalf of the Vendor contrary to regulation 25 and Part 1, Schedule 4, rule 11 of the Agents Licensing Regulations 1979<sup>15</sup>.
90. The Board is satisfied that Mr Hendriks and Ms Rowan failed to exercise due skill, care and diligence in carrying out the agent's duties when dealing with any person, contrary to s.65 of the Agents Licensing Act and regulation 25 and Part 1, Schedule 4, rule 12 of the Regulations 1979<sup>16</sup>.
91. In doing so, the honour and dignity of the profession was not upheld<sup>17</sup>.
92. The Board is satisfied that it is authorised to take disciplinary action against the Alice Springs Realty Pty Ltd, Mr Hendriks and Ms Rowan in relation to the allegations that have been made and to go on to exercise power under s.69 of

<sup>12</sup> *Medical Board of Australia -v- Ainsworth* [2019] VCAT 734 at [80], citing *Peeke -v- Medical Board of Victoria*, unreported, Supreme Court of Victoria, 19 January 1993, page 6.

<sup>13</sup> Rule 11 An agent must exercise due skill, care and diligence in carrying out the agent's duties on behalf of a client.

<sup>14</sup> Rule 5(a) ... a real estate or business agent must have due regard to and comply with rules of real estate practice published or approved by the Real Estate Institute of the Northern Territory.

<sup>15</sup> *Ibid* at fn13

<sup>16</sup> Rule 12 A failure to exercise due skill, care and diligence when dealing with any person in the course of conducting business as an agent.

<sup>17</sup> *Ibid* at fn 14



the Act.

93. ASR, Mr Hendriks and Ms Rowan have not been the subject of any prior complaint under the Act.
94. Had the "Matters to be Inquired Into" document included Mr Hendriks' involvement in the issues of the missing Building Report, the Contract of Sale not addressing that fact, and the alleged "higher bidders", the Board may have considered imposing a significant penalty on him.
95. The relevant penalty unit for 2021 is \$157.00.
96. Although, the Act does not provide for the making of an apology by a respondent under s.69 of the Act, owing to the extreme stress suffered by the Complainant and his wife in their purchase of the Property caused by Mr Hendriks and Ms Rowan, the Board suggests that it would be appropriate for the Agents to provide a written apology to them.

### **The Decision of the Board**

97. Pursuant to s.69(1)(a) of the Act, the Board is satisfied that it is authorised to take disciplinary action and impose a reprimand on Alice Springs Realty Pty Ltd.
98. Pursuant to s.69(1)(a) and (b) of the Act, the Board is satisfied that it is authorised to take disciplinary action and imposes a reprimand and a fine of 15 penalty units in the amount of \$2,355.00 on Mr Andrew Hendriks.
99. Pursuant to s.69(1)(a) and (b) of the Act, the Board is satisfied that it is authorised to take disciplinary action and imposes a caution and a fine of 10 penalty units in the amount of \$1,570.00 on Ms Toni Rowan.

### **Right of Appeal**

1. Section 85 of the Act provides that a person aggrieved by a decision of the Board can appeal to the Local Court.
2. An appeal application must be made within 21 days of the date of this decision.

Dated 24 November 2023 at Darwin



Gabrielle Martin  
Deputy Chairperson  
Agents Licensing Board of the Northern Territory