



2. The Board has determined that the First Respondent breached Ss.65(1)(a), (c) & (d) and 67(1)(c) & (m) of the Act, and that pursuant to s.44B(1)(d)& (e) of the Act:
  1. In relation to Allegations 2, 3 and 4 are concerned, the First Respondent's registration is cancelled from 14 December 2018 and she may only apply for registration after 12 months from the date of this decision on the condition that she completes the following educational qualifications for agent's representatives prior to re-applying for registration as an agent's representative, namely:
    - i. PRDRE 17A - Effectively manage property and account to landlord
    - ii. PRDRE 32A - Maintain and protect conditions of rented properties
3. The Board has determined that the Second Respondent breached Ss.35, 65(1)(a), (c) & (d), 67(1)(c) & (m) and 110A(5), and that pursuant to s.69(1)(b) & (c) of the Act:
  1. In relation to Allegations 3, 4 and 5 are concerned, the Second Respondent is fined 20 penalty units (i.e. \$3,100.00); and
  2. In relation to Allegation 7, the Second Respondent's licence is suspended for a period of three months effective on 14 December 2018.
4. These are the reasons for the Board's decision.

## **The Allegations against the First and Second Respondents**

### **Allegation 1**

It is alleged that:

- (a) At all material times the Respondents were registered partners and traded under the business name of NT Property Specialists (ABN 44 811 504 538) ("Business").
- (b) The First Respondent:
  - a. Was, apart from between 8 August 2017 and 8 February 2018 (inclusive), at all material times an agent's representative for the purposes of the Act;
  - b. Was not registered as an agent's representative between 8 August 2017 and 8 February 2018 (inclusive), by order of the Agents Licensing Board ("Board") dated 8 August 2017 to suspend her registration for 6 months with immediate effect, under s.44B(1)(c) of the Act; and
  - c. Acted as and carried out functions as an agent's representative and otherwise performed services, for and on behalf of the Second Respondent.

- (c) At all material times the Second Respondent:
  - a. Was an agent for the purposes of the Act.
  - b. Was the named business manager of the Business for the purposes of the Act.
- (d) All material times the First Complainant, Alison Burke and Daryl Frost, were the registered proprietors of:
  - a. 3/1 Darter Court, Leanyer (“Leanyer Property”);
  - b. 42 Woodroffe Avenue, Woodroffe; and
  - c. 7/27 Wulagi Crescent, Wulagi, in the Northern Territory (“Burke and Frost Properties”).
- (e) At all material times the Second Complainant, Paul Swain, was the registered proprietor of 1/14 Barrett Street, Muirhead, in the Northern Territory (“Swain Property”).
- (f) At all material times, the Second Respondent was the agent appointed to manage the Burke and Frost Properties and the Swain Property, on behalf of the respective owners.

## **Allegation 2**

It is further alleged that:

- (a) Between on or about 8 August 2017 and 29 September 2017, the First Respondent acted as and carried out the functions of an agent’s representative and held herself out as an agent’s representative in the employment of the Business and/or acting for and on behalf of the Second Respondent, whilst not a registered agent’s representative, contrary to ss.33(1) and (2) of the Act.

## **PARTICULARS**

- (i) The First Respondent’s name, photograph, profile and contact details appeared on [www.realestate.com.au](http://www.realestate.com.au) in connection with the Business offering properties for rent.
  - (ii) On or about 12 September 2017 the First Respondent completed an outgoing inspection report at the Leanyer Property.
  - (iii) The First Respondent was a party to e-mail communications, including with the First Complainant Mr Burke and Ms Frost and the outgoing tenant, in relation to matters going to the management of the Leanyer Property; and
- (b) That constitutes a breach of ss.33(1), 33(2), 44(1)(d), 44(1)(e) and 65(1)(a)&(d) of the Act; and
  - (c) The First Respondent is guilty of a breach of the rules of conduct for agents.

### **Allegation 3**

It is further alleged:

- (a) The First Respondent and/or the Second Respondent failed to arrange for repairs to the spa pump at the Leanyer Property, in a timely manner and with due skill, care or diligence.

#### **PARTICULARS**

- (i) After obtaining a professional assessment that the spa filter required repairs on or about 13 September 2016, the Respondents did not notify or seek instructions from Mr Burke or Ms Frost in respect of repairs, until after on or about 5 August 2017.
- (ii) The Respondents never arranged for spa filter repair works to be completed; and
- (b) That constitutes a failure to perform duties to the principal for the purposes of s.65(1)(c) of the Act and/or a failure to exercise due skill, care or diligence for the purposes of s.65(1)(d) of the Act; and
- (c) The First Respondent and/or Second Respondent is guilty of a breach of the rules of conduct for agents.

### **Allegation 4**

It is further alleged:

- (a) The First Respondent and/or the Second Respondent failed to perform duties to Mr Swain and/or carry out the lawful instructions of Mr Swain and/or failed to sufficiently or adequately communicate with Mr Swain about matters relating to the management and tenancy of the Swain Property.

#### **PARTICULARS**

- (i) On or about 21 April 2017, the Respondents entered into a lease with Kathryn Schache for the Swain Property on behalf of Mr and Mrs Swain, to commence on 5 May 2017.
- (ii) The Respondents failed to obtain 2 weeks rent and the bond from Ms Schache.
- (iii) The Respondents removed the Swain Property from the market, but when Ms Schache failed to take possession of the Swain Property and make rent payments, the Respondents failed to inform Mr and Mrs Swain.
- (iv) In July 2017, Mr and Mrs Swain made numerous attempts to communicate with the Respondents by telephone, e-mail and internet about the lease of the Swain Property, without success.
- (v) On 6 July 2017, the Respondents notified Mr and Mrs Swain that Ms Schache failed to complete the tenancy; and
- (d) That constitutes a failure to perform duties to, or carry out the lawful instructions of, the principal for the purposes of s.65(1)(c) of the Act and/or a failure to exercise due skill, care or diligence for the purposes of s.65(1)(d) of the Act; and

- (e) The First Respondent and/or the Second Respondent is guilty of a breach of the rules of conduct for agents.

**Allegation 5**

It is further alleged:

- (a) Between 8 August 2017 and on or about 29 September 2017, the Second Respondent permitted the First Respondent to carry out in the functions of an agent's representative, in circumstances where she was not a registered agent's representative; and
- (b) That constitutes a breach of ss.35 and 65(1)(a) of the Act; and
- (c) The Second Respondent is guilty of a breach of the rules of conduct for agents.

**Allegation 6**

It is further alleged:

- (a) The Second Respondent failed to notify the Board of a change in circumstances relevant to her licence, contrary to s.31AA of the Act.

PARTICULARS

- (i) In or about February 2017, the Second Respondent relocated to New South Wales and failed to notify the Board.
- (b) That constitutes a breach of s.65(1)(a) of the Act; and
- (c) The Second Respondent is guilty of a breach of the rules of conduct for agents.

**Allegation 7**

It is further alleged:

- (a) From on or about March 2017, the Second Respondent failed to ensure that there was a business manager in respect of the Business, contrary to s.110A of the Act.

PARTICULARS

- (i) In or about February 2017, the Second Respondent relocated to New South Wales.
- (ii) Thereafter, the Second Respondent did not have substantive or effective control of the registered office of the Business;
- (b) That constitutes a breach of ss.65(1)(a) and 110A of the Act; and
- (c) The Second Respondent is guilty of a breach of the rules of conduct for agents.

## Relevant Legislation

5. The Applicant may apply pursuant to s.44(4) of the Act for disciplinary action to be taken against an agent's representative on one or more of the grounds referred to in s.44(1) of the Act.

6. The Applicants rely on the grounds set out in s.44(1) (d) and (e) to ground their application for disciplinary action against the First Respondent.

### **44 Disciplinary action**

(1) *The Board may take disciplinary action against an agent's representative on one or more of the following grounds:*

(d) *the agent's representative has acted in a manner that, had the agent's representative been a licensed agent, would have been in breach of the rules of conduct specified in section 65;*

(e) *any other reasonable ground which, in the opinion of the Board, is sufficient to warrant the taking of disciplinary action against the agent's representative.*

7. The Applicants may apply pursuant to s.68(3) for disciplinary action to be taken against a licensed agent on one or more of the grounds referred to in s.67 of the Act.

8. The Applicant rely on the grounds set out in s.67(1)(c) of the Act to ground their applications for disciplinary action against the Second Respondent.

### **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;

(m) without the consent in writing of the principal on whose behalf he acts, publishes, or causes to be published an advertisement or other statement that he is authorised to sell property at a price higher than or lower than the price authorised by the principal;

9. The Applicants rely on the following rules of conduct in bringing their applications:

### **65 Rules of conduct**

(1) A licensed agent who:

(a) breaches this Act or the regulations, whether or not the licensed agent is found guilty of an offence in respect of the breach; or

(b) ....

(c) fails to perform his duties to his principal or to carry out the lawful instructions of his principal; or

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

10. The disciplinary powers of the Board after an Inquiry concerning an agents representative are provided at s.44B of the Act;

### **44B Powers of Board after inquiry**

(1) Where, at the conclusion of an inquiry under section 44(5), the Board is satisfied that it is authorised to take disciplinary action

against an agent's representative, the Board may:

- (a) reprimand or caution the agent's representative; or
- (b) by notice in writing, impose a fine not exceeding 5 penalty units on the agent's representative; or
- (c) by notice in writing, suspend the registration of the agent's representative until the expiration of the period, or the fulfilment of a condition, specified in the notice; or
- (d) by notice in writing, cancel the registration of the agent's representative and, if the Board thinks fit, specify a period that is to expire or impose a condition that is to be fulfilled before he or she may apply for registration as an agent's representative again.

11. The disciplinary powers of the Board after an Inquiry concerning a licensed agent are provided at s.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; or
- (b) by notice in writing, impose a fine not exceeding 50 penalty units on the agent; or
- (c) by notice in writing, suspend the licence of the agent until the expiration of the period, or the fulfilment of a condition, specified in the notice; or
- (d) by notice in writing, revoke the licence of the agent.

### **The Conduct of the Disciplinary Inquiry**

12. The Board was assisted by Counsel, Mr Tass Liveris.
13. At the Disciplinary Inquiry on 15 November 2018, the First Respondent was unrepresented and the Second Respondent was represented by Mr Jude Lee. On 30 November 2018, the First Respondent appeared in person and the Second Respondent attended by telephone and was unrepresented.
14. Counsel Assisting reminded the parties in his opening address that the rules of natural justice applied to proceedings before the Board and that the standard of proof was the balance of probabilities in accordance with the principles set down in *Briginshaw vs. Briginshaw*<sup>1</sup>.
15. No applications or objections were made to the Board's composition.

### **The Issues**

16. The issues in this Inquiry concerning the alleged breaches of conduct by the Respondents were whether:

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<sup>1</sup> (1938) 60 CLR 336

- a. the First Respondent had during a period of suspension:
    - acted as and carried out functions as an agent's representative and otherwise performed services, for and on behalf of the Second Respondent; and/or
    - held herself out to be an agent's representative;
  - b. the First Respondent had, in respect of the First Complainant, failed to perform duties to the principal and/or a failure to exercise due skill, care or diligence;
  - c. the First Respondent had, in respect of the Second Complainant, failed to perform duties to the principal and/or a failure to exercise due skill, care or diligence;
  - d. the Second Respondent permitted the First Respondent to carry out the functions of an agent's representative, in circumstances where she was not a registered agent's representative;
  - e. the Second Respondent had, in respect of the First Complainant, failed to perform duties to the principal and/or a failure to exercise due skill, care or diligence;
  - f. the Second Respondent had, in respect of the Second Complainant, failed to perform duties to the principal and/or a failure to exercise due skill, care or diligence;
  - g. the Second Respondent failed to comply with a statutory requirement to notify the Board of a change in circumstances relevant to her licence;
  - h. the Second Respondent had substantive or effective control of the registered office of the Business; and/or
  - i. there is a finding of a breach of discipline in any or all of (a) to (h) above, the appropriate disciplinary sanction.
17. Respondents were advised by letter from the Chairperson to their former legal representative on 10 August 2018 of the case against them (IB 307-311).
18. The oral testimony of the First and Second Complainants was given under oath by telephone in the Inquiry. Their evidence was in accordance with the documentary evidence in the Inquiry Brief (IB 1-85). The First Complainant claimed to have suffered a \$9,000.00 loss. This was not quantified nor was there any documentary evidence in support of the claim before the Inquiry. The Second Complainant claimed a \$7,000.00 loss and that was the subject of a successful application to NTCAT.
19. The First and Second Respondents submitted written evidence (IB 228-256) and gave evidence on oath; they were cross-examined.

## **Background**

20. The two Respondents were partners (co-owners) in a business which traded under the name of NT Property Specialists. The Second Respondent had



the role of business manager with the First Respondent working as an agent's representative.

21. On 8 August 2017, the First Respondent's registration as an agent's representative was suspended for a period of six months by the Board following a disciplinary hearing (IB 327). Up until the time when the First Respondent's registration was suspended, it appears that each of the Respondents managed separate rent rolls.
22. Following the suspension, the First Respondent continued to work at the premises of the NT Property Specialists.

### **The First Respondent's Case**

23. In the Respondents' written submissions (IB 247-248), the First Respondent admitted to working as an agent's representative while suspended.
24. However, the First Respondent did not admit to holding herself as an agent's representative nor failing to perform duties to the principal and/or failing to exercise due skill, care or diligence concerning the Complainants' complaints.
25. Evidence was given about a proposed tenancy (by Ms Schache) of the Second Respondent's property. The tenancy arrangements collapsed after the property was taken off the market but before a bond and rent for the initial period were provided by Ms Schache.
26. The First Respondent claims there were issues with NT Property Specialists' IT system at the relevant time and a typo in the Second Complainant's email address prevented timely communications with the Second Complainant. This led to a two month period elapsing before the Second Complainant became aware that the tenant (Ms Schache) had advised the First Respondent that she was not taking up residence of his property.
27. In oral evidence, the First Respondent said that the duties of an agent's representative were vague. She referred to it as a "grey" area. She admitted to working as an agent's representative while suspended. In summary, she said she accepted full responsibility for the complaints of the First Complainant and any repercussions saying it was a small agency with limited resources. In hindsight, she said she should have done things differently.
28. In dealing with the consequences of the First Respondent's suspension the two Respondents gave evidence that their intention was that the First Respondent would continue to work in the office but would not perform the role of an agent's representative.
29. Despite this, there was evidence that the First Respondent's photo and the office phone number could be found on [www.realestate.com.au](http://www.realestate.com.au) during the period of her suspension.
30. In denying that the First Respondent held herself out as an agent's representative and in explaining the evidence mentioned in the previous paragraphs ([28] and [29]), the two Respondents stated that they did not want to "unnecessarily upset the landlords", so they did not alter the website. However,

the First Respondent later admitted in cross-examination that the public perception of her photo and the office phone number on the website would be that she was registered under the Act and not simply a receptionist or other office worker.

31. The First Respondent denied any breach of conduct regarding the First Complainant and the “spa pump” issue. She relied on a contractor’s assurances that he would repair the pump in 2016. However, it had still not been repaired by 2017. She said it was “just human error” that she did not follow-up the damage to the spa pump for 12 months.
32. In cross-examination, the First Respondent said the Second Respondent left Darwin in 2015 to work in Sydney.
33. The First Respondent apologised to the Board for her breach of the suspension and said that she hid those actions from the Second Respondent. The First Respondent stated that she does not intend to work as an agent’s representative again.

### **The Second Respondent's Case**

34. The Respondents said in their letter to the Registrar (IB 247) that they founded the NT Property Specialists in 2013. It became a successful business but, owing to her mother’s illness, the Second Respondent found it necessary to move to NSW. She said that she sold her half of the rent roll to a third party. At this time, she continued to be solely responsible for the Trust Account and remained the Business Manager of NT Property Specialists.
35. The First Respondent was before the Board in 2017. Two more staff were employed in the event that the First Respondent’s agent’s representative certificate was cancelled. In their letter to the Registrar (IB 247), the Respondents said that this left the First Respondent to “take on the exclusive role as Business Manager”. (In oral evidence, the Second Respondent corrected that and said it should have read “Office Manager”.)
36. Following the Board’s suspension of the First Respondent’s registration, the Respondents discussed the “gravity” of the situation and made “immediate changes” to the business. The Second Respondent said that it was difficult to know what duties the First Respondent could and could not do. There was no legislative requirement to disclose the Board’s finding to their clients. The Respondents’ decision not to introduce the two new staff as the Property Managers to landlords and tenants was considered by the Respondents “not to be misleading or dishonest”.
37. The First Respondent admitted that she continued to manage the First Complainant’s property at “Darter Court” after she was suspended because allowing the two new staff members to take it over would only “add further tension to the situation” (IB 248). It is the Respondents’ submissions that the First Respondent’s actions were neither negligent nor the cause of financial loss to the First Complainant, and that she always acted in the First Complainant’s best interests. It was admitted by the Respondents that the First Respondent should not have been directly involved in the First Complainant’s properties.

38. After the situation “arose” (i.e. when the First Complainant became aware that the First Respondent was working whilst suspended), the First Respondent commenced working from home and had no further contact with any of the clients from NT Property Specialists.
39. In oral evidence, the Second Respondent admitted to moving interstate in 2014 and on another occasion, in 2015, due to “personal matters” (her mother had a stroke and the Second Respondent became pregnant). She had financial control of NT Property Specialists and was solely responsible for its Trust Account. She said that she had electronic access to the IT system and monitored it regularly, including emails between the staff and tenants and landlords.
40. The Second Respondent discussed the consequences of the First Respondent’s suspension on NT Property Specialists with the First Respondent. They reached an agreement, subject to the Board’s determination, that the First Respondent would perform “office duties” only and monitor and support the two other agent’s representatives in the business. These two agent’s representatives had been employed in the event that the First Respondent’s registration might be cancelled under the earlier disciplinary action against her, decided in August 2017. One of the agent’s representatives gained her registration in April 2017 and the other in November 2017. At that time, the rent roll had 160 landlords including the Complainants.
41. During the suspension period (8 August 2017 to 8 February 2018), the Respondents agreed that the duties for the First Respondent included supporting the two employees and general administrative and reception duties.
42. The Second Respondent took over as Property Manager after the situation arose with the First Complainants. She was aware that the First Respondent’s photo remained on the website with the office phone number. It was also evident that, in the statements issued to landlords (IB 216 & 217), the word “Manager” sat next to the First Respondent’s name. The Second Respondent admitted in oral evidence that the public would perceive from the website and from the word “Manager” appearing next to her name, that the First Respondent was an agent. The Second Respondent said there was no intention to deceive the public as to the status of the First Respondent.
43. The Second Respondent said that in the period 2014 to 2017, she returned to NT Property Specialists in Darwin for two to three weeks at a time, about 6 times all together. There had been no issues with landlords or tenants prior to 2017.
44. The Second Respondent said that the address for the business in Darwin had always been her contact address and living interstate did not alter that.
45. The Second Respondent said that she had no knowledge of the First Respondent’s actions which are the subject of this disciplinary action against her. She did not check the First Respondent’s emails or office involvement because she trusted her. The Second Respondent was more concerned with checking the emails and work of the two new staff.
46. The Second Respondent said that she exercised effective and substantial control of NT Property Specialists through telephone and electronic monitoring. The Second Respondent does not intend to work as a Licensed Real Estate

Agent in the Northern Territory again.

### **Closing Submissions – Mr Tass Liveris**

47. Mr Liveris submitted that:
1. In respect of the question, did the First Respondent hold herself out as an agent's representative, it is clear that she was prepared to negotiate for the leasing, letting or other dealings with, or the disposition of land pursuant to s.5(2)(a)(ii) of the Act which states the definition of a real estate agent. It was a conscious decision by the First Respondent to keep her name on the website and involve herself in the outgoing inspection and report of one of the First Complainant's properties during the period of suspension;
  2. The First Respondent acknowledged her breach of conduct in respect of the suspension period;
  3. In respect of the First Respondent's dealing with the Second Complainant, the evidence shows that there was a failure on her part to adequately communicate with a Principal and a failure to prove the Principal with adequate service;
  4. There is an agreement between the First Respondent and the Second Complainant to compensate him for his loss;
  5. The evidence demonstrates that, due to the actions of the First Respondent, (working and holding herself out as an agent's representative while under suspension, failing to exercise due skill, care or diligence; failing to perform duties to the principal; communicate adequately with a Principal, leaving the registered office in the hands of two new staff,) the Second Respondent failed to ensure substantive and/or effective control of the registered office of the Business;
  6. The Respondents failed to perform duties to the principal and failed to exercise due skill, care or diligence, in respect of the First Complainant's property at Darter Court, and
  7. The Second Respondent failed to notify the Board that she had moved interstate and therefore her contact address had changed.

### **Closing Submissions – Mr Jude Lee**

48. Mr Lee submitted that
1. The *Briginshaw* standard of proof did not apply to regulatory offences<sup>2</sup>;
  2. There was no vicarious liability under the Act;
  3. Intention is an element of each breach;
  4. In respect of Allegation #3, (First Complainant's properties and permission for repairs and the spa pump issue) she had no knowledge of the First Respondent's actions;
  5. In respect of Allegation #4 (Second Complainant's tenancy agreement with Ms Schache) she had no knowledge of the First Respondent's actions;
  6. In respect of Allegation #5 (Second Respondent permitted the First Respondent to carry out the duties of an agent's representative) she had no knowledge of the First Respondent's actions;
  7. In respect of Allegation #6 (Second Respondent's failure to notify the Board of a change of circumstance) – the relevant Regulation 20(c) refers

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<sup>2</sup> This was a misconceived point. "Regulatory" offences are offences for criminal matters for which, amongst other matters, there is no need to prove intention. See section 22, Part II of the Criminal Code

to the “contact address” as being the only subject of the notification. The principal address for the business has always been the contact address and that has not changed so there is no breach;

8. In respect of Allegation #7 (the Second Respondent failed to ensure there was a business manager in respect of the Business maintaining substantive and effective control of the registered office) – that does not mean manage the minutiae. The Second Respondent was the Business Manager and did maintain substantive and effective control of the registered office to the extent of her knowledge of the business.

### **The Reasons for the Decision.**

49. The Board finds proven the matters alleged in Allegation #1.
50. The First Respondent admitted to the breaches as alleged in respect of Allegation #2. The Board found that the First Respondent acted as an agent’s representative and held herself out as an agent’s representative while suspended contrary to Ss.44(1)(d) & (e) and s.65(1)(a) of the Act.
51. In relations to Allegation #3, the Board finds the First and Second Respondents failed to perform duties to the principal and failed to exercise due skill, care or diligence, in respect of the First Complainant’s property at Darter Court, the broken spa pump and other maintenance issues contrary to s.65(1)(c) and 65(1)(d) of the Act.
52. In relation to Allegation #4, the Board finds that the First and Second Respondents failed to adequately communicate with the Second Complainant about the Muirhead property and the tenancy agreement as detailed in Allegation #4, and therefore, failed to perform duties to the principal and failed to exercise due skill, care or diligence contrary to Ss.65(1)(c) and 65(1)(d) of the Act.
53. In relation to Allegation #5, the Board finds that the Second Respondent permitted a situation to evolve where her oversight of the First Respondent had diminished and serious breaches of conduct by the First Respondent occurred.
54. The breaches included a failure to perform her duties to her principal or to carry out the lawful instructions of her principal and a failure to exercise due skill, care or diligence in carrying out her duties on behalf of her principal.
55. Notwithstanding the First Respondent not advising the Second Respondent of her involvement with the Darter Court and Muirhead properties, the Second Respondent’s failure to adequately monitor the situation permitted the First Respondent to carry out the functions of an agent’s representative in circumstances where she was an unregistered agent’s representative. As such, that conduct constitutes a failure to perform duties to the principal and/or a failure to exercise due skill, care or diligence breach of the rules of conduct for agents; contrary to Ss.35 and 65(1)(a) of the Act.
56. The Board dismisses Allegation #6 as there was no evidence to support the allegation that s.31AA had been breached. The Board notes that there may have been a breach of regulation 22.

57. In relations to Allegation #7, the Board finds that, in light of the many actions of the First Respondent during the period of suspension, the Second Respondent, who mostly lived interstate for over three years and only visiting a maximum of six times in that period, did not exercise effective and substantial control over the business in the period in which the complaints of the First and Second Complainants took place contrary to Ss.65(1)(a) and 110A of the Act.
58. After considering all the evidence, the Board were unanimous in their decision to find that;
1. the First Respondent breached Ss.65(1)(a), (c) & (d) and s.67(1)(c) & (m) of the Act; and
  2. the Second Respondent breached Ss.35, s.65(1)(a), (c) & (d), s.67(1)(c) & (m) and 110A(5) of the Act.
59. In determining the penalties for each of the Respondents, the Board considered the protection of the community, upholding the professional and ethical standards of the real estate industry, the seriousness of the breaches of the Act and the nature of deterrence. The penalties are set out in paragraphs 2 and 3 of this decision.
60. In imposing separate penalties for breaches of the separate allegations against the Second Respondent, the Board had regard to the submissions made by Counsel Assisting that that was possible despite the decision of the Local Court in *Thong Sum Lee v Agents Licensing Board* [2009] NTMC 039.

For the Board



Gabrielle Martin

Alternate Chairperson

14 December 2018