

**In a matter before
The Agents Licensing Board
Of the Northern Territory**

Application for Disciplinary Action

Between: Registrar of Land, Business and Conveyancing Agents
Applicant

And Kathryn Alison Staite
Respondent

BOARD: Mr John Tsoukalis - Chairperson
Ms Diane Davies - Industry representative
Ms Jo-Anne Pulsford - Industry representative
Mr Rob Kendrick - Consumer representative

DATE OF HEARING: 7 April 2017

APPEARANCES

Mr Mark Thomas: Counsel for the Respondent

STATEMENT OF REASONS FOR DECISION

Decision

1. On 7 April 2017, the Agents Licensing Board met to hold a Disciplinary Inquiry into an application made by the Registrar of Land, Business and Conveyancing Agents, pursuant to section 44(3) of the *Agents Licensing Act (the Act)* for disciplinary action to be taken against registered agent's representative, Kathryn Alison Staite (*the Respondent*).
2. After hearing the evidence and considering this matter the members of the Board were split in their decision 2 – 2, thus the Chairman exercised his casting vote pursuant to section 14(4)(e) of the Act.
3. The Board has decided, with the Chairman exercising his casting vote pursuant to section 14(4)(e) of the Act, that:

- i. The Respondent's registration as an agent's representative be suspended as from today for a period of 6 months; and
 - ii. The Respondent be reprimanded and cautioned not to offend in the future otherwise any future registration as an agent's representative under the Act or any future licence applied for under the Act may be at risk.
4. These are the reasons for the Board's decision. Members Davies and Kendrick have provided their own dissenting reasons.

Particulars of Allegations against the Respondent

5. On or about 23 June 2016 the Respondent pleaded guilty to a number of offences in the Local Court of the Northern Territory of Australia at Darwin, including the following offences:
- (a) Unlawfully possessed Methamphetamine, a dangerous drug as specified in Schedule 1 of the *Misuse of Drugs Act* AND THAT the said unlawful possession involved the following circumstance of aggravation - That the said defendant was in possession of the dangerous drug in a public place,

Contrary to sections 9(1) and 9(2)(c)(i) of *Misuse of Drugs Act*;
 - (b) Unlawfully possessed a glass pipe for use in the administration of a dangerous drug,

Contrary to section 12(1) of the *Misuse of Drugs Act*.
6. The Local Court ordered that no conviction be recorded in respect of these above mentioned offences but did impose a bond of \$500.00 and victim assistance levies of \$300.00.

Relevant Legislation

7. The Applicant may apply pursuant to section 44(3) for disciplinary action to be taken against an agent's representative on one or more of the grounds referred to in subsection (1).

"44 Disciplinary action

- (3) *The Registrar may apply, by notice in writing, for disciplinary action to be taken against an agent's representative on one or more of the grounds referred to in subsection (1)"*

8. The Applicant relies on the grounds set out in section 44(1)(e) to ground this application for disciplinary action.

“44 Disciplinary action

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

(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.”*

9. Pursuant to section 44(1)(e), the Board may take disciplinary action against an agent's representative on 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.
10. Section 39(1) provides, inter alia, that a person is entitled to be registered as an agent's representative where he or she is a fit and proper person.

“39 Qualifications

Where an application is made in accordance with this Part, the applicant is entitled to be registered as an agent's representative where he or she proves to the satisfaction of the Board that:

(b) *he or she is a fit and proper person; and”*

11. Section 20 sets out the meaning of a “fit and proper” person. Section 20(2)(a) provides for a person to be disqualified if the person has been found guilty of an offence against the *Misuse of Drugs Act*.
12. The findings of guilt against the Respondent of offences against the *Misuse of Drugs Act*, could mean that the Respondent is a disqualified person and no longer a fit and proper person under section 20 of the Act. Sections 20(1), 20(2) and 20(3) are set out hereunder.

“Division 2 Qualifications for licence as agent

20 Meaning of fit and proper person

(1) *A natural person is a fit and proper person for the purposes of section 22, 25 or 39 if the person:*

(a) *is not a disqualified person as determined in accordance with this section; and*

- (b) *is a person whose general reputation in the community (which may include a place outside the Territory) is such that the Board is satisfied that the person will competently, conscientiously and honestly perform the duties of an agent in relation to the person's employees and clients; and*
 - (c) *has completed the application for a licence frankly, comprehensively and honestly.*
- (2) *A person is a disqualified person for the purposes of subsection (1)(a) if the person:*
- (a) *has in the 10 years immediately before the person applied for the licence, been found guilty (whether or not in the Territory) of a prescribed offence or an offence that involves dishonesty or violence or is an offence against the Misuse of Drugs Act, the Kava Management Act or a corresponding law declared under subsection (8); or*
 - (b) *is mentally incapable of performing the duties of an agent; or*
 - (c) *is disqualified from holding a licence, certificate of registration or other authority under the Consumer Affairs and Fair Trading Act or a corresponding law declared under subsection (8) or is the holder of such a licence, certificate or authority that is suspended; or*
 - (d) *has, at the time of the application, failed to pay a monetary penalty payable by the person under this Act, the Consumer Affairs and Fair Trading Act or a corresponding law declared under subsection (8) or failed to comply with a direction given by the Board; or*
 - (e) *has failed to provide the Board with an auditor's report that the person is required to provide under this Act on the audit of the records and documents relating to money held in a trust account kept by the person under this Act; or*
 - (f) *is at the time of the application in breach of a provision of this Act or the Regulations that is prescribed by regulation as a disqualifying breach.*
- (3) *The Board may determine that an offence referred to in subsection (2)(a) is not to be taken into account for the purposes of this section:*

- (a) *because of the time that has passed since the offence was committed; or*
- (b) *because the act or omission constituting the offence was trivial."*

13. Pursuant to section 20(3), the Board has discretion to determine that an offence referred to in subsection 20(2)(a) of the Act (found guilty of an offence against the *Misuse of Drugs Act*) is not to be taken into account for the purposes of the section because of the time that has elapsed since the offence was committed or because the act or omission constituting the offence was trivial.
14. The disciplinary powers of the Board are found in sections 44 and 44B.

"44B Powers of Board after Inquiry

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."*

The Conduct of the Disciplinary Inquiry

15. Respondent was represented by counsel at the Disciplinary Inquiry.
16. The Chairman reminded the parties that the rules of natural justice applied to proceedings before the Board, and that either party was to be allowed comment on all of the material taken into account by the Board. No applications or objections were made to the Board's composition.

The Issues

17. The issues in this Inquiry were:

- a. whether as a result of the Respondent being found guilty of offences against the Misuse of Drugs Act the Respondent has ceased to be a fit and proper person for the purpose of being registered as an agent's representative under the Act;
- b. whether the Board should apply section 20(3)(b) and not take into account the offences against the Misuse of Drugs Act because the act constituting the offence was trivial.
- c. Subject to (a) and (b), the appropriate disciplinary sanction.

The Registrar's Case

18. The Registrar's case was contained in the Inquiry Brief. The Inquiry Brief was tendered and marked as exhibit "A". In short, the Registrar contended that the Respondent having being found guilty of offences under the Misuse of Drugs Act that Ms Staite has the status of a disqualified person and was therefore no longer eligible for continued registration as an agent's representative.
19. The Registrar's case was, in substance, particularised in the application for disciplinary action.
20. A copy of the Certificate of Proceedings dated 25 July 2016 issued by the Clerk of Courts of the Local Court of the Northern Territory regarding Case No. 21620538 pursuant to the *Evidence (National Uniform Legislation) Act*, was tendered in support of the application.
21. The Inquiry brief satisfied the Board that the Respondent was proven guilty of offences contrary to the *Misuse of Drugs Act*.

The Respondent's Case

22. The Respondent's Counsel submitted:
 - a. The Respondent was born in New Zealand and migrated to Sydney, Australia in 1978.
 - b. The Respondent is a sole mother of 2 young children, aged 2 and 6.
 - c. The Business NT Property Specialists commenced in February of 2013. Initially, it was slow but now is fairly successful with approximately 150 properties under management. At peak time the Respondent was working more than 100 hours a week.
 - d. The Respondent's relationship broke down in or about April 2016.

- e. The relationship breakdown and the stressful long hours at work contributed to her committing the drug offences.
- f. There are 8 or so people plus the 2 children that are financially dependent on the Business and they would all be impacted upon if the Respondent was to lose her registration as an agent's representative.
- g. The Board's powers after Inquiry are set out at section 44B and that the Board has power pursuant to section 44B(1)(a) to reprimand or caution the agent's representative.
- h. The Board should treat the Respondent the same way that the Local Court dealt with Ms Staite. That is, to deal with her with a caution, which is consistent with the way in which she was dealt with when she pleaded guilty to the drug matters before the Local Court.
- i. The Respondent is of good character who made a fundamental error of judgment in getting involved with a hideous drug.
- j. The Respondent was very foolish and that the drug experience was a one off with the consequences of that error of judgement continuing to inflict significant embarrassment and continuing stress and jeopardising her livelihood.
- k. Section 20(2) does not apply to this matter. Section 20(2) looks at the period of ten years immediately before the person applied for the licence, and whether the person was found guilty of an offence against the Misuse of Drugs Act during that 10 year period.
- l. Section 20 considers the qualifications of persons who are looking to become a licensee or to be registered and whether they are fit and proper persons. Section 20 does not apply to a person who already holds a licence or is already registered.
- m. That the fair and appropriate course for the Board is to deal with this matter pursuant to section 44B and proceed by way of a caution or reprimand, especially as the Respondent faces the prospect of losing her livelihood.
- n. The Local Court took into account the Respondent's character and was satisfied that general deterrence was adequately achieved by the fact that the Respondent had attended court and publicly admitted to offending. Although the Respondent pleaded guilty to the drug offences, no conviction was recorded however fines and levies were imposed.
- o. The Board heard the Respondent's evidence and was also able to question the Respondent under oath. The Board accepted the

Respondent's evidence that she was genuinely remorseful, that getting involved with drugs was an "insane mistake" and that she had made a really bad judgement call during what was a difficult period in her life, and that it will never happen again.

The Reasons for the Decision

23. The Board did not accept the Respondent's Counsel's submission that section 20 did not apply in these circumstances.
24. The Board is of the view that the guilty findings of offences under the Misuse of Drugs disqualifies the Respondent, as the Respondent is no longer a "fit and proper person "for the purposes of section 20 of the Act.
25. The issue then became sub-section 20(3)(b) of the Act:

"20(3) The Board may determine that an offence referred to in subsection (2)(a) is not to be taken into account for the purposes of this section:

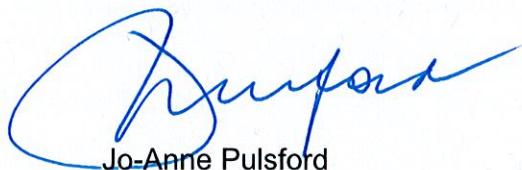
(b) because the act or omission constituting the offence was trivial."
26. Under section 20(3)(b) of the Act, the Board has discretion to determine that an offence referred to in subsection 20(2)(a) is not to be taken into account for the purposes of the section because the act or omission constituting the offence was trivial.
27. The question was therefore whether the Board was satisfied from the evidence before it, that the act constituting the offence was trivial and whether section 20(3)(b) applied.
28. The Board members gave great weight to the following:
 - (a) The Applicant's character and remorsefulness.
 - (b) The finding by the Local Court not to record conviction and to simply impose fines and levies.
 - (c) The Board's concern as to the reputation of real estate agents in the general community and in particular the issue of drug taking within the industry.
29. After considering all the evidence, the members of the Board were split 2 - 2 as follows:

- (a) Mr Tsoukalis and Ms Pulsford voted that the act constituting the offence was trivial and therefore pursuant to section 20(3)(b) the Respondent was not a disqualified person.
- (b) Ms Davis and Mr Kendrick voted that the act constituting the offence was not trivial and therefore the Respondent was a disqualified person for the purposes of subsection 20(1)(a) and that the Respondent's registration should be cancelled. Members Davies and Kendrick have published their own reasons for their dissenting decision.

30. As a result of the Board's split decision, the Chairman exercised his casting vote pursuant to section 14(4)(e) of the Act and the Board has determined, as follows:

- (a) The disqualifying offence by the Respondent under the Misuse of Drugs Act was trivial;
- (b) The Board would exercise its discretion under section 20(3)(b) and not take this disqualifying offence into account, as the act constituting the offence was trivial;
- (c) The Respondent's registration as an agent's representative be suspended as from today for a period of 6 months; and
- (d) The Respondent be reprimanded and cautioned not to offend in the future, otherwise her registration as an agent's representative could be cancelled and her ability to obtain for a real estate agents licence in the future may be jeopardised.

For the Board



Jo-Anne Pulsford
Member

8 August 2017