

**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** **MICHAEL TOLIOS**  
Respondent

Date of hearing: **8th March, 2012**

Chairperson: Sue Philip  
Real Estate Member: Diane Davis  
Departmental Member: Karen Christopher  
Consumer Representative: Donald Hudson

Appearances:

Applicant: Ruth Brebner  
Respondent: MuruganThangaraj SC

**STATEMENT OF REASONS FOR DECISION**

**Background**

1. On the 21<sup>st</sup> February 2012 the Registrar made application to the Board under Section 44(3) Agents Licensing Act (hereinafter called "ALA") for Disciplinary Action against the Respondent, Michael Tolios, on the ground set out in Section 44(1) (c) ALA that the Respondent had been found guilty of an offence against a law that involves dishonesty..
2. The Respondent is a registered Agent's Representative, registered Number AC 2281, being first registered on 10<sup>th</sup> September 2008. Annual registration fees have been paid and the registration remains in force.

3. On the 24<sup>th</sup> January 2012, the Respondent was found guilty by Carey SM in the Darwin Court of Summary Jurisdiction of the offences of Forgery, pursuant to Section 258(d) of the Criminal Code, and Uttering a Forged Document pursuant to Section 260 of the Criminal Code. On the 7<sup>th</sup> March 2012, sentence was passed of an aggregate of twelve months imprisonment, suspended after service of two months. On 7<sup>th</sup> March 2012, the Respondent lodged an appeal to the Supreme Court against his conviction and sentence and was released on bail.
4. Following out-of-session consideration of the Application, the Board, on 22<sup>nd</sup> February 2012, determined under Section 44(5) to hold an Inquiry. The Board noted the Registrar's request for immediate suspension of the Respondent's registration pending the conclusion of the Inquiry but resolved that any suspension should wait until the matter come before the Board in session, the matter to be brought on as quickly as possible. The Application was set down for hearing on 8<sup>th</sup> March 2012. At the hearing, the Registrar was represented by Counsel, Ms Ruth Brebner while Mr Thangaraj SC appeared on behalf of the Respondent.

### **The Issues**

5. The issues in this Inquiry were:
  - a. a consideration by the Board as to whether the Application should be adjourned pending the outcome of the Appeal to the Supreme Court made on 7<sup>th</sup> March 2012;
  - b. if so, whether the Respondent's registration as an Agent's Representative should be suspended pending such outcome .

### **Relevant Legislation**

6. Disciplinary action may be taken against a registered Agent's Representative on the grounds provided in section 44 of the Act.

#### ***44 Disciplinary action***

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

*(c) the agent's representative has been found guilty of an offence against any other law that involves dishonesty, whether the finding of guilt took place before or after the commencement of this Act or within or outside the Territory;*

7. Applications for such action may be made under Section 44

*(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).*

*(5) Subject to subsection (6), where:*

*(a) an application for disciplinary action is made under this section; or*

*(b) the Board considers that there may be grounds under subsection (1) for the taking of disciplinary action against an agent's representative,*

*the Board must hold an inquiry.*

8. The Board has power to suspend Registration until conclusion of the Inquiry under Section 44A

**44A Board may suspend registration pending inquiry**

*(1) Where the Board is to hold an inquiry under section 44(5), it may suspend the registration of the agent's representative to whom the inquiry relates until the conclusion of the inquiry.*

*(2) Where the Board suspends the registration of an agent's representative under subsection (1), the Registrar must, by written notice, inform the agent's representative of the suspension.*

9. In the event of the Board granting the application, the Respondent may be dealt with as provided in section 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.*

### **Conduct of the Matter**

10. The Board was provided with Briefing Papers which had also been supplied to the Respondent. The parties proceeded on the basis of the documents contained in the Brief. Submissions were taken from Counsel for both parties and sworn testimony from Mr Glenn Grantham of Raine and Horne Real Estate Darwin, the Respondent's employer.

### **Adjournment of Application**

11. Section 44(1)(c) requires only that the Agent's Representative be found guilty of an offence that involves dishonesty. That occurred on 24<sup>th</sup> January when the Respondent was found guilty in the Local Court of the offences of Forgery and uttering a Forged Document. The Board however acknowledged that an appeal to the Supreme Court against that finding as well as sentence had been lodged and that to proceed to a final Inquiry while the appeal remained unresolved would be unsafe. Immediate cancellation of the Respondent's registration would leave him in the position of having to reapply for registration if his appeal was successful. The Board resolved that the matter should be adjourned pending the outcome of the Supreme Court Appeal lodged on 7<sup>th</sup> March 2012 and should be resumed forthwith on the day following the handing down of the Appeal decision without the requirement for seven days notice referred to in Section 77(2)

### **Suspension Pending Conclusion of the Inquiry**

12. The Board considered the power conferred on it by Section 44A of the ALA to suspend the registration of an Agent's Representative until the conclusion of an Inquiry relating to him. The Section provided no guidance as to when it is to be exercised, but such a power, impacting as it does on a person's ability to earn their living, must be exercised cautiously.

The Board noted that it was charged by the Act with the maintenance and regulation of a system of licensing and registration for specified categories of agents. That the intent of this system was to protect the interests of the public was clear from such provisions as those requiring that an applicant for registration or licensing be a fit and proper person, the provision of a Fidelity Fund and the mechanisms allowing for Disciplinary Action to be taken against persons registered or licensed under the Act. The Board also considered, however, that the Act was intended to maintain the professional standards and standing of the categories of agents covered by it. The ALA prescribes rules of conduct for agents which, as well as protecting members of the public, were designed to uphold the professional standards of agents as does the requirement that an applicant be a fit and proper person. The Board considered that those legislative objectives must be borne in mind in exercising the power under Section 44A.

13. The Board considered submissions from both parties in relation to the Respondent's registration pending the outcome of his appeal and a range of options including simply leaving Mr Tolios' registration in place, imposing conditions on his registration and exercising the power of suspension. Evidence was taken from Mr Glenn Grantham, the principal of Raine and Horne Darwin and the Respondent's employer. Mr Grantham offered personal undertakings as to the supervision of Mr Tolios' work and direct supervision of preparation of any documentation.
14. While acknowledging that an appeal had been lodged, the Board noted that the Respondent nevertheless had been convicted of serious offences involving dishonesty and further His Honour, Carey SM had imposed a term of actual imprisonment, making a number of adverse comments about the Respondent. Neither the public nor the profession of real estate agents and representatives could have faith in the Respondent's good character following that decision and it was not in the interests of either the public or profession that the Respondent's registration remain unaffected during the period awaiting appeal.
15. The Board further considered any mechanism for imposing conditions on the Respondent's registration and the impact of undertakings from his employer. While the Board found Mr Grantham to be an impressive witness of good standing, it could not be satisfied that his undertakings would be effective to increase the amount of supervision or control that would ordinarily be exercised over an Agent's Representative. The Board could not determine, nor were any conditions proposed, which could effectively restrict the registration of the Respondent in light of the serious nature of the offences in respect of which he had been found guilty.

16. The Board determined that the only reasonable course of action open to it in the circumstances of the finding of guilt by His Honour, Carey SM on the 24<sup>th</sup> January 2012 was to suspend the Respondent's registration.

**Action**

On the 8<sup>th</sup> March 2012, the Board adjourned the Application of the Registrar dated 21<sup>st</sup> February 2012 pending the outcome of the Supreme Court Appeal lodged on 7<sup>th</sup> March 2012, such Application to be resumed forthwith on the next working day following the handing down of the Appeal decision without the requirement for seven days notice referred to in Section 77(2).

The Board further determined that pursuant to Section 44A of the ALA that the Registration Number AC 2281 of the Respondent be suspended effective immediately and directed the Registrar to give the notice of suspension required by Section 44(A)(2).

For the Board



Suzanne Philip  
Chairperson