

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

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

Applicant

AND:

**ROXANNA PTY LTD**

Respondent

Date of hearing: 22 February 2023

Chairperson: Mr Mark Thomas

Consumer representative: Ms Lea Aitken

Departmental representative: Mr Robert Bradshaw

Appearances: Self-represented

Date of decision: 30 Oct 2023

**STATEMENT OF REASONS FOR DECISION**

**PART A: BACKGROUND**

1. The Registrar of Land, Business and Conveyancing Agents applied, pursuant to section 68 (2)<sup>1</sup> of the Agents Licensing Act 1979 (hereafter "The Act"), for disciplinary action to be taken against a licensed agent Roxanna Pty Ltd<sup>2</sup> trading as Homezone NT. Mr Roxley Pearce is the branch manager of Roxanna Pty Ltd.

**PART B: GROUNDS & PARTICULARS OF APPLICATION**

2. Section 68 (2) of the Act states that the Registrar may apply, by notice in writing, for disciplinary action to be taken against a licensed agent on one or more of the grounds

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<sup>1</sup> The Registrar's application refers to the application being made pursuant to s 67, whereas s 68 (2) is the applicable section.

<sup>2</sup> When reference is made to Roxanna it is always assumed that, unless specifically stated, it is Roxanna **Pty Ltd** that is referred to.

referred to in section 67 of the Act. The ground referred to in the application is contained in section 67 (m), which states:

*“Any other reasonable ground, which in the opinion of the Board, is sufficient to warrant revocation of the licence of the agent.”*

3. The Registrar in its application then refers to section s55 of the Act, which is stated in full. The principal components of s55, upon which reliance is placed, are:

*Ss (1): a licensed agent shall keep such accounting records as disclose particulars of*

- (a) All trust moneys received from day to day by the agent on behalf of each client for whom he or she acts; and*
- (b) All payments made by the agent from day to day out of the trust moneys so received.*

*Ss (2): a licensed agent shall ...*

- (c) cause those records to be kept in such a manner that they can be conveniently and properly audited.*

4. Section 55 is not the only section relevant to the allegation. The others are sections 52 and 59.

5. The particulars of the allegation forming the basis of the ground are stated as follows:

5.1. Ms Lina Gilmour of *Absolute Accounting* advised that she was unable to reconcile the annual return for Roxanna Pty Ltd for the year ending 30 June 2021. She outlined her concerns to the Dept at DOCUMENT 5, ATTACHMENT B. Those concerns included rent receipts being mistakenly receipted twice; bonds mistakenly receipted as rent; some tenancies, consequently, having a nil security deposit; multiple tenancy files requiring refunds, which did not occur; lack of understanding of the reconciliation process; non-recording of transfers from the trust to office account;

5.2. Mr Peter Hill, auditor of Perks, advised that he had resigned as auditor due to the issues specified by Ms Lina Gilmour;

5.3. Mr Roxley Pearce sought an extension of time to complete and submit the audit due to the auditor's resignation;

5.4. Mr McLaren of the Dept sent formal correspondence to Mr Pearce on 14 Sept 2021 in which he made Mr Pearce aware of the deficiencies identified by Ms Gilmour;

- 5.5. At the invitation of Occupational Licensing Mr Pearce attending a meeting with the Dept on 14 September 2021<sup>3</sup> to discuss the request for an extension of time;
- 5.6. At the meeting on 14 September 2021 Mr McLaren issued Mr Pearce formal correspondence setting out the concerns raised by Ms Gilmour and Mr Hill;
- 5.7. At the 14 Sept 2021 meeting Mr Pearce advised that Perks had now agreed to undertake the audit provided the software known as *Property Tree* was corrected and the accounts in order. Mr Pearce advised that the audit could commence in Nov 2021;
- 5.8. Mr Pearce has not been able to provide an audit for the trust account of Roxanna for the financial year ending 30 June 2021.
6. Of the items in para [5] which are stated to be particulars of the ground, it is only the first sub-clause that provide specific particulars of the ground, namely details of the failure to provide appropriate records for the purpose of s 55 of the Act. The other items address the history of the matter, namely the resignation of the auditor, the application for an extension of time to file the audit, the failure to provide an audit, and, finally, present a history of the interactions between Mr Pearce and the Department concerning the 14 Sept 2021 meeting.

#### **PART C: OUTLINE OF EVENTS TO DATE OF HEARING**

7. Mr Pearce made an application to the Registrar to grant a further extension of time in which to lodge the trust account audit for the year ending 30/6/21. He sought an extension to 30/9/2022 and proposed to lodge audits for both the financial years ending 30/6/2021 and 30/6/2022 at the same time. On 20 April 2022 the Dept granted this request.
8. On 11/3/2022 Mr Pearce advised that he had located an accounting firm named Hastings and Co, who specialised in an accounting property management software system named *Property Tree*, and that Roxanna was working to rectify the trust accounts.
9. For approximately 2 years Roxanna Pty Ltd employed a property manager named Ms Paige Torney. Her interim registration as an agent's representative expired on 1 May 2020. She continued to operate unlicensed after that date (DOCUMENT 5, ANNEXURE A). She has since left Roxanna. Employment of a non-licensed agent is not one of the particulars. Nevertheless, this state of affairs did not assist Roxanna to get its trust accounting system in order.

#### **PART D: THE INQUIRY OF 22 FEBRUARY 2023**

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<sup>3</sup> Given the sequence of events, the date in the application of 14/9/2022 must be a typographical error and will be treated as 14/9/2021.

10. Mr Roxley Pearce appeared before the Board unrepresented. The material tendered (exhibit 1) was the Application for Disciplinary Action against Roxanna Pty Ltd DOCUMENT 1); email correspondence between Mr Pearce and the Dept regarding a bookkeeper (DOCUMENT 2); emails concerning a meeting with Mr Pearce (DOCUMENT 3); emails concerning an application for extension of the audit filing time DOCUMENT 4); Compliance report and Annexures A, B, C, D and H (DOCUMENT 5).
11. Mr Pearce candidly admitted that the breaches of section 55 of the Act were made out. He said that he had been affected (adversely) by Ms Torney's work in Roxanna. He had to terminate her employment. He said that he had spent \$9,900 of his own money to in an endeavour to put the rental trust account in order. He said he was not aware that after 1 May 2020 Ms Torney was working whilst unlicensed. He accepted that for a lengthy period of time the trust account was not compliant with the law. It was obvious that Roxanna's trust account records were seriously defective for the reasons specified by Ms Lina Gilmour. Mr Pearce said that he had no defence and that he was in the process of trying to remedy the problem.

#### **PART E: THE BOARD'S FINDINGS**

12. The issues regarding Roxanna's trust account have been a protracted problem for a number of years. There is no issue that the particulars relating to the ground are made out. There have been many delays preceding the hearing of this matter, not all of which are the fault of Roxanna. They include the delay from the date of the filing of the Registrar's application (on/about 3 August 2022) and the hearing in February 2023.
13. The state of Roxanna's trust account records was clearly very poor. It was affected by a chronic issue constituted by a failure by those charged with administering the trust accounting system to not properly understand and implement their obligations under s 55. There also appeared to be a systems failure regarding the competent use of *Property Tree* to administer the trust account system. A further failure was not ensuring that monthly reconciliations of the trust account were done- in order to identify problems with the trust account at an early stage. Fixing these problems was not assisted by a problem in retaining trust account auditors.
14. The breaches of s 55, which are specified by Ms Lina Gilmour at DOCUMENT 5, ATTACHMENT B, constitute key breaches of core requirements of Roxanna's trust account legal obligations, namely, to keep records as to the details of those monies, that is who they are obtained from and when. This is a key responsibility to the public, the failure of which can lead to integral issues concerning a general lowering of trust in real estate agents.
15. The Board must determine if the particularised breaches constitute a reasonable ground, which in the opinion of the Board, is sufficient to warrant the revocation of Roxanna's licence. Rental receipts receipted twice, and bonds mistakenly receipted as rent, leading to nil balances in rental bonds accounts, are of fundamental concern, as is the apparent lack of understanding of the legal obligations associated with the trust account reconciliation process. Due to the seriousness (and persistence) of these

breaches, the Board considers that the breaches could lead to the revocation of Roxanna's real estate agent licence. Hence, the ground is made out.

## **PART F: SANCTION**

16. The Board is satisfied, pursuant to s 69(1) of the Act, that it is authorised to take disciplinary action against Roxanna Pty Ltd. The Board finds that there has been conduct that is sufficient to warrant the revocation of Roxanna's real estate licence. Despite this finding, the Board, in determining the appropriate penalty under s 69 of the Act, it is not obliged to revoke Roxanna's license. Rather, the Board must determine which of the sanctions in s 69 is appropriate in the circumstances. The breaches concern trust account issues which had been outstanding for a number of years. The Board has said before and repeats the point that it vital that real estate agents have their trust accounts in order. This is imperative in order to provide protection to members of the public. If there is a problem, as there clearly was in this case, professional specialised assistance must be persisted with to in order to fix it and to put in place measures to ensure that a repetition of the problem(s) does not occur. On the plus side, it does appear to the Board that Mr Pearce is making genuine efforts to address these issues: he has also spent a considerable amount of his own money in that regard. He has also hired an assistant who is specifically tasked with fixing the trust accounting issues. It is also to be hoped that Mr Pearce's appearance before the Board was, of itself, a salutary lesson for him.
17. The Board considers that it is appropriate in all the circumstances of this case to impose a **REPRIMAND** upon Roxanna Pty Ltd. But for the financial loss incurred by Roxanna the imposition of a substantial fine of 100 penalty units would have been in order. The Board also takes into account the significant delay, not all of which is attributable to Roxanna that has occurred.
18. Pursuant to section 69 (3) of the Act the Board has the power to direct the licensed agent to take or to refrain from taking a specified action within such time as the Board in that notice shall specify. Consistent with the reasoning previously referred to, the Board has determined to impose the following direction on Roxanna Pty Ltd in respect to its real estate licence. That direction is as follows:
  - (1) That from the date of imposition of this decision, Roxanna is to carry out monthly reconciliations of its trust account and to supply the results of those monthly reconciliations to the Registrar of Land, Business and Conveyancing Agents.
18. Roxanna is formerly warned that if it commits a second offence against s55, that it is at serious risk of a substantial fine being imposed upon it.
19. In coming to its decision, the Board has considered the seriousness of Roxanna's actions and the need to deter other real estate agents from acting in the same or similar manner as the most weighty matters in formulating a sanction that would

further the aims of community protection and maintaining confidence in the real estate industry.

**PART G: RIGHT OF APPEAL**

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

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

DATED 31 OCTOBER 2023 AT SYDNEY

*Mark Thomas*

MARK THOMAS,  
CHAIRPERSON,  
AGENTS LICENSING BOARD OF THE NORTHERN TERRITORY