

**IN THE MATTER OF A
DISCIPLINARY INQUIRY
PURSUANT TO SECTION 44, 67 68 & 69
OF THE *AGENTS LICENSING ACT 1979*
AGAINST SUZANNE MILGATE AND
MILGATE REAL ESTATE PTY LTD**

APPLICANT : JANE SMITH (*not her real name*(*))

DATE OF BOARD MEETING: 4 JULY 2023

Deputy Chairperson: Gabrielle Martin
Alternate Member Lea Aitken
Alternate Member Joseph Kuhn

Counsel Assisting Tass Liveris

Appearances: Suzanne Milgate

Support staff Ben Tuffnell
Registrar of Land Business
and Conveyancing Agents

Laine Cornish
Senior Board Support Officer

STATEMENT OF REASONS FOR DECISION

Introduction

1. On 6 August 2021, the Complainant lodged her complaint against Ms Suzanne Milgate.
2. The matter concerns a complaint made by Jane Smith (*not her real name*)(*) (the Complainant) pursuant to section 67(c) of the *Agents Licensing Act* (the Act). It alleged that Ms Milgate, a licensed agent, is guilty of a breach of the Rules of Conduct for agents, (s.65 (1) of the Act and Schedule 4, section 5(a), 10 and 11 of the *Agents Licensing Regulations* (the Regulations), namely that the agent has:
 - a. Failed to exercise due skills, care and diligence in carrying out the agents duties on behalf of a client; and
 - b. Failed to exercise due skill, care and diligence when dealing with any person in the course of conducting business as an agent.

(*) The Board relies on s.84A(2) of the *Agents Licensing Act* in withholding her name because publishing those details may lead to an interference with her privacy.

Background

3. It is alleged that at all material times:

- (a) Milgate Real Estate Pty Ltd (MRE) was the holder of licence number REL1238 and was licensed to carry on business as an agent under the Act, having first held a licence since 3 January 2020;
- (b) Ms Milgate was a director of MRE at the relevant time, the holder of licence number REL1237 and was licensed to carry on business as an agent under the Act, having first held a licence since 3 January 2020;
- (c) an address in Johnston (Premises)(*) was owned by A Hayes (Owner);
- (d) MRE was the Owner's Agent; and
- (e) The Complainant was aged 18 years at the time of the complaint, a single mother of one child and a high school student.

(*) The Board relies on s.84A(2) of the *Agents Licensing Act* in withholding the address because publishing those details may lead to an interference with her privacy.

- 4. On 23 June 2021, the Complainant and Ms Milgate (on behalf of the Owner) executed a *Residential Tenancy Agreement* (RTA) in relation to the Premises.
- 5. The RTA was for a fixed term starting on 28 June 2021 and ending on 27 June 2022.
- 6. The Premises was approved under the National Rental Assistance Scheme (NRAS). The rent specified was \$208.00 per week, payable weekly, permitting no more than 1 adult and 1 baby to occupy the Premises.
- 7. The RTA provided for a fixed tenancy starting on 28 June 2021 and ending on 27 June 2022.
- 8. It was a term of the RTA that the Complainant must use the Premises solely for private residential purposes and not for any other purpose without the written consent of the Owner (Clause 7.1).
- 9. The Complainant was required to notify Centrelink of her income. Under the NRAS, the maximum gross household income (before tax) applicable to the Complainant was \$108,587 per annum.

Evidence

- 10. The Complainant is a content creator on the website *onlyfans.com* (Onlyfans). She did not attend the Inquiry.
- 11. Onlyfans is a digital content subscription service based in the United Kingdom. Content creators are able to earn money from users who subscribe to their content to view it. Payments are made to content creators directly from users.
- 12. The Complainant controlled her content on Onlyfans by an internet and telephone service in her name.
- 13. During the term of the RTA, the Complainant posted images of herself onto Onlyfans in order to receive payments from digital subscribers. The Complainant said in evidence that she had not received any income from Onlyfans at the time of Ms Milgate's actions (Attachment E).
- 14. On 30 July 2021, Ms Milgate sent the Complainant a text message (Attachment E) with images of the Complainant that had been copied from her Onlyfans site

and asked, "Is this you? From our owners property?" The Complainant replied, "Yes that is me, I do not understand why you are asking me that question".

15. Ms Milgate responded to the Complainant with:
 - (a) A text message containing a screenshot of a photograph of the Complainant being viewed from an Onlyfans account and a message that said, "This looks like the background from [Johnston address] ? We have to serve you a notice to vacate property immediately, we will be coming around with police"; and
 - (b) Another text message with a screenshot of another photograph of the Complainant being viewed from an Onlyfans account and a message that said, "We have reported you to police".
16. The Complainant replied on 30 July 2021 with a message "What?".
17. Ms Milgate responded by sending the Complainant a text message containing a screenshot of another photograph of the Complainant being viewed from an Only fans account and a message that said, "We have to report you to Centrelink too".
18. The Complainant responded to Ms Milgate with a text message that asked, "Reported me to police for what?" and another that asked, "Excuse me what?".
19. Ms Milgate replied with a text message which said, "Ps we are reporting you to family affairs too".
20. After sending the Complainant this text message, Ms Milgate telephoned her and, the Complainant alleged Ms Milgate:
 - (a) Accused her of operating a sexual business on NRAS property with a 2 year-old;
 - (b) Told her that she was under investigation by Police;
 - (c) Called the Complainant a horrible person; and
 - (d) Told the Complainant that she had her bum and tits out and was a bitch, and then ended the call.
21. On 30 July 2021, Ms Milgate sent the Complainant a copy of the RTA by text message and wrote, "we will be notifying NRAS today of your eligibility under the [NRAS], that you signed a stat dec that you will no longer fall under the income".
22. On 5 August 2021, the Complainant issued a notice to remedy breach under the RTA to Ms Milgate (an RT04b), seeking a formal apology and an undertaking to no longer threaten her or her child, or interfere with their peace and privacy at the Premises.
23. The following day, on 6 August 2021, Ms Milgate issued the Complainant with a RT04a Notice under the *Residential Tenancies Act* (the RT Act) requiring her to provide proof that she was no longer operating a business at the Premises.
24. The clear intention of Ms Milgate was to evict the Complainant from the Premises.
25. The Complainant alleges that, before the matters set out in paragraphs 14 to 22

above took place, the Complainant fell out with a mutual friend of Ms Milgate. She believed that this was the real motivation behind Ms Milgate's actions against her.

26. On 9 August 2021, Ms Milgate contacted Senior Compliance Officer Cassidy in the Office of Occupational Licensing and Associations. This contact was in response to an email from Senior Compliance Officer Cassidy requesting information from Ms Milgate relating to the Complainant's allegations.
27. According to Senior Compliance Officer Cassidy, Ms Milgate was verbally abusive to her and she had to terminate the call.
28. Ms Milgate recontacted Senior Compliance Officer Cassidy who warned Ms Milgate that her behaviour would not be tolerated and that she needed to respond to the email as requested.
29. Ms Milgate did respond to the email, however, she did not provide the information requested.

Ms Milgate's Evidence

30. Ms Milgate attended the Inquiry. She said that clause 7.1 of the RTA applied in this case.
31. She said that she had "moral concerns" about the welfare of a child and the use of the business for prostitution.
32. She said in evidence that she had called Centrelink and gave her own name to report the Complainant to Centrelink about her new income. She told Centrelink the Complainant was offering sexual services.
33. She admitted to using the term "we" when she was really only talking about herself in the capacity of a real estate agent.
34. She said she did not make a report to NT Police but she did make a report to "Family Services".
35. Ms Milgate contacted NRAS. In an email string provided by her, it would appear that the agency responsible for NRAS is reliant on the Owner of a premises, or its agent, to update them on a tenant's income.
36. In these circumstances, Ms Milgate had no documentary evidence of the tenant's change in income. She alleged that the Complaint told her she was earning \$1,500.00 per week. She used that figure to calculate the annual income which she believed to be in excess of the threshold of \$108,000.00. I note that an income of \$1,500.00 per week is equal to \$78,000.00 per annum.
37. Ms Milgate admitted sending the Complainant the text messages and emails in evidence.
38. She received the Complainant's RT04b Form but she does not believe she owes her any apology.
39. Ms Milgate said she did what she did because she was just following her duty and responsibilities. She has a duty of care to look after the Landlord's Premises.
40. She understands that she did not include the breach in her RT04A Form. She denies threatening the Complainant. She does not believe that she owes the

Complainant an apology.

41. In regard to the “Dobbin Complaint”, she said he complained about other real estate agents at the time, Call to View, Ray White, Elders etc.

The Relevant Legislation

- ***Agents Licensing Act***

S.65 Rules of conduct

- (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.

S.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;

S.68 Applications for disciplinary action

- ...
- (3) Any person may apply, by notice in writing lodged with the Registrar, for disciplinary action to be taken against a licensed agent on one or more of the grounds referred to in section 67.
- (4) Where:
 - (a) subject to subsection (5), an application for disciplinary action to be taken against a licensed agent is lodged in accordance with this section; or

- (b) the Board considers that there may be grounds under section 67 for disciplinary action to be taken against a licensed agent,

the Board shall hold an inquiry.

- ***Agents Licensing Regulations***

- S.25 Rules of conduct**

- For section 127(1)(j) of the Act:

- (a) the rules of conduct for all agents are as set out in Schedule 4, Part 1; and
 - (b) additional rules of conduct for conveyancing agents are as set out in Schedule 4, Part 2.

- Schedule 4 Rules of conduct**

- 5(a). Subject to any other specific rules of conduct, a real estate or business agent must have due regard to and comply with the rules of real estate practice published or approved by the Real Estate Institute of the Northern Territory;

- 11. An agent must exercise due skill, care and diligence in carrying out the agent's duties on behalf of a client;
 - 12. An agent must exercise due skill, care and diligence when dealing with any person in the course of conducting business as an agent.

- ***Residential Tenancies Act***

- Definitions**

- In this Act:

- premises*** means residential premises or part of residential premises to which a tenancy agreement relates or is to relate but does not include premises leased principally for business purposes whether or not the premises may be used for residence under the lease.

- S.65 Tenant to be able to use and enjoy property**

- It is a term of a tenancy agreement that:

- (a) a tenant is entitled to quiet enjoyment of the premises without interruption by the landlord or a person claiming under the landlord or with superior title to the landlord's title; and
 - (b) the landlord will not cause an interference with the reasonable peace or privacy of a tenant in the tenant's use of the premises.

- S.66 Landlord not to interfere with tenant's enjoyment of premises**

- (1) A landlord must not cause interference with the reasonable peace or privacy of a tenant in the tenant's use of the premises, except in accordance with this Act.

- Maximum penalty: 100 penalty units.

- (2) A landlord must not force, or attempt to force, a tenant to vacate the premises:
 - (a) except in accordance with this Act; or
 - (b) in circumstances that amount to harassment of a tenant.Maximum penalty: 100 penalty units.

S.96B Other breach by tenant

- (1) This section applies if a tenant breaches a term of a tenancy agreement (other than a term relating to payment of rent) that:
 - (a) is a term of the agreement by virtue of this Act; or
 - (b) is specified to be a term a breach of which permits the landlord to terminate the agreement.
- (2) The landlord may give the tenant a notice, signed by the landlord, stating the following:
 - (a) the address of the premises to which the tenancy agreement relates;
 - (b) the tenant is in breach of the tenancy agreement;
 - (c) the nature of the breach;
 - (d) the tenant is required to remedy the breach, or take steps to the landlord's satisfaction to do so, before the date specified in the notice (which must be more than 7 days after the notice is given);
 - (e) if the tenant does not remedy the breach or take steps to the landlord's satisfaction to do so, as required, the landlord intends to apply to the Tribunal for an order for termination of the tenancy and possession of the premises.
- (3) If the tenant does not remedy the breach or take steps to the landlord's satisfaction to do so, as required by the notice, the landlord may apply under section 100A for an order for termination of the tenancy and possession of the premises.
- (4) The landlord must make the application no later than 14 days after the date specified in the notice under subsection (2)(d).

Agents' Duties

- 42. 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 ¹.
- 43. The terms "skill", "care" and "diligence" are not defined in the Act. In *Re Whittles*, the Board applied dictionary definitions, specifically "the ability to do

¹ *Re Whittles* at [66] – [67], citing *Georgieff -v- Athans* (1981) 26 SASR 412 at 413.

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 ².

44. The Code is designed to assist and guide members of the REINT in their conduct with the public and other real estate practitioners. 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 ³.
45. Under the Code, a practitioner⁴, should 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 ⁵.
46. A practitioner must avoid the use of rude and inappropriate language in dealings with clients and staff⁶.

Quiet Enjoyment

47. A tenant is entitled to quiet enjoyment of the premises without interruption by the landlord and the landlord will not cause an interference with the reasonable peace and privacy of a tenant in their use of the premises⁷.
48. This is a right to enjoyment of premises for all usual purposes without interference and includes but is not limited to, the right to enjoy the premises free from harassment by the landlord or the landlord’s agents⁸.
49. A deliberate and persistent attempt by a landlord to drive the tenant out of the premises by persecution and intimidation, including threats of physical eviction is a serious interference with the tenant’s right of possession, even if there is no direct physical interference with the tenant’s possession and enjoyment⁹.
50. Depriving a tenant of their home is a serious and important matter¹⁰ which has psychological, social and legal consequences¹¹.

Findings

51. The first question has to be in participating in the website onlyfans.com as a content creator for reward, was the Complainant using the Premises for

² At 72

³ Code p.2

⁴ Defined to mean any licensed or registered agent, sales representative, property manager, strata/Body Corporate manager or auctioneer involved in real estate for fee or reward: see page 3

⁵ Code p.4

⁶ *Re Whittles* at [66] – [67], citing *Georgieff -v- Athans* (1981) 26 SASR 412 at 413.

⁷ S.65 of the *Residential Tenancies Act 1999*

⁸ *Martins Camera Corner Pty Ltd -v- Hotel Mayfair Ltd* [1976] 2 NSWLR 15 at 23; *Shkloar -v- Thomson* [2015] ACAT 21 (Shkloar) at [13] – [16].

⁹ *Spathis -v- Hanave Investment Co Pty Ltd* [2002] NSWSC 304, citing *Kenny -v- Preen* [1963] QB 1 QB 499 at 513; Shkloar.

¹⁰ *Williams -v- CEO Housing* (2013) 22 NTLR 88 (**Williams**) at 16, citing *Crook -v- Consumer, Trader and Tenancy Tribunal (NSW)* (2003) 59 NSWLR 300 at [20].

¹¹ *Williams* at [18], citing *Commissioner for Social Housing in the ACT -v- Canham* [2012] ACAT 41.

“business purposes” and secondly, if the answer is “yes”, was the Premises leased principally for business purposes.

52. The kind of activity the Complainant participated in could only be described as a “business activity”. There were only a few photos of the Complainant taken from the onlyfans.com website. There was nothing to suggest that she was using the Premises primarily for the posting of her images on the website.
53. The next question is, was the Complainant using the Premises solely for private residential purposes; if “no”, was she using it for another purpose and did she have the written consent of the Owner?
54. It is clear that the Complainant was using the premises for another purpose and that she did not have the written consent of the Owner, and in doing so, there is a continuing breach of Clause 7.1 of the RTA.
55. Ms Milgate issued a RT04a Notice on 6 August 2021 (ie “Notice by Landlord to Tenant to Remedy Breach of Agreement”).
56. The content of the Notice fails to detail any alleged breach of the Act, Regulations or the RTA.
57. The RT04a provides the following sentence under the Complainant’s name and the address of the Premises, “I give you notice that you are in breach of the residential tenancy agreement that relates to the premises referred to above.”
58. The Form then provides a space for the Owner/Agent to describe the breach. The following is what Ms Milgate wrote:

The breach is as follows: Further to my email below, I just wanted to clarify that you may at this time serve a breach notice as per Section 96B of the Residential Tenancies Act 1999 (attached) giving the tenant more than seven days to remedy the breach. If they fail to do so you may apply to NTCAT within 14 days of the remedy date under section 100A to terminate the tenancy.
59. The words do not make any sense in this context. However, the two sentences look like they could have been advice to her on the operation of S96B of the Act.
60. The only indication of the alleged breach is under paragraph b which states the action the Complainant was required to take namely;

PROVIDE EVIDENCE PROOF THAT YOU ARE NO LONGER OPERATING A BUSINESS AT THIS RESIDENTIAL NRAS PROPERTY
61. As there was no clear breach of the Act or the RTA stated in the first part of the RT04a Form, the Form is invalid and the subsequent “action the Complainant was required to take” has no legal force.
62. It is alleged by the Complainant that Ms Milgate came to know about the Complainant’s activities on Onlyfans through a mutual friend with whom the Complainant had a recent disagreement.
63. That may be true and it may also be true that Ms Milgate was acting in support of her friend when she subsequently contacted the Complainant in the way she did. However, there is no evidence before the Inquiry to support a finding on that allegation.

64. What is for the Board's determination is, apart from the failed RT04a, Ms Milgate's conduct and whether that conduct breached the Act and Regulations.
65. I refer to paragraphs 14 to 22 above.
66. Ms Milgate admitted sending the Complainant the text messages and emails in evidence.
67. In relation to the first text message sent by Ms Milgate on 30 July 2021 (ie "is this you" etc), it is a fair question in light of the possible breach of Clause 7.1 of the RTA.
68. The first part of the second text message ("This looks like the background from [Johnston address] ?") is also a fair question for the same reason.
69. However, in relation to part two of the text message which states, "We have to serve you a notice to vacate property immediately, we will be coming around with police" Ms Milgate had no lawful ground to evict the Complainant and no lawful grounds to attend the Premises immediately with the police.
70. Both statements are threatening and intimidating and act to interfere with the Complainant's right to peace and quiet enjoyment of the Premises without being persecuted and intimidated, including threats of physical eviction.
71. The next text message said, "We have reported you to police".
72. And, in the next two texts, Ms Milgate wrote:
 - a. "We have reported you to Centrelink too."
 - b. "Ps we are reporting you to family affairs too."
73. In evidence, Ms Milgate admitted that she had not called the police and there was no lawful reason for her to do so. She also said the use of the word "we" when she texted the Complainant was just the way she talks.
74. Ms Milgate told the Inquiry that she had contacted both Centrelink and "family affairs". (I believe she means the NT Department of Territory Families, Housing and Communities when she refers to "family affairs".).
75. Ms Milgate's evidence is that the Complainant had not been truthful about her income hence her contact with Centrelink. She also had "concerns about the welfare of the baby" hence the reason she made contact with "family affairs".
76. Ms Milgate admitted not having any documentary evidence of the tenant's change in income. She alleged that the Complainant told her she was earning \$1,500.00 per week. She used that figure to calculate the annual income which she believed to be in excess of the threshold of \$108,000.00. I note that an income of \$1,500.00 per week is equal to \$78,000.00 per annum.
77. The Complainant had a young child, however, there was no evidence or any suggestion that that her conduct put her child at risk of harm.
78. The Board finds that the three statements, couched in the terms of "we", creating a sense of an imbalance of power in Ms Milgate's favour, were intended to harass and intimidate the Complainant.
79. Further, the fact that Ms Milgate wrongly stated she had contacted the police

when she had not and had contacted Centrelink and “family affairs when there was no lawful or other ground was also intended to threaten and intimidate the Complainant.

80. Ms Milgate phoned the Complainant after the last text. She admitted in evidence that she accused the Complainant of operating a “sexual business on an NRAS property with a two year old” but denied stating that the Complainant was under investigation by police, called her a “horrible person”, said that the Complainant had her bum and tits out, and said she “was a bitch”.

81. On 5 August 2021, the Complainant lodged a RT04b against Ms Milgate (ie “Notice by Tenant to Landlord to Remedy Breach of Agreement”). It alleged the following breach:

You have breached section 65 of the residential tenancies act by sending the tenant text messages with the intention of disrupting the quiet enjoyment of the premises. You have intimidated the tenant with threats of removing the tenant from the premises with police, ~~threats to report the tenant to Centrelink and threats to report the tenant to family affairs.~~ You have also verbally (via phone call) threatened police have the tenant ‘under investigation for operating a sexual business’ as well as using insulting terms to the tenant about their career choices regarding the tenant being a mother of a 2-year-old-son.

82. The Complainant requested Ms Milgate comply with this remedy:

Issue a formal apology to the tenant, including that you will not breach again and will no longer threaten the tenants or interfere with the reasonable peace or privacy of the tenant in the tenant’s use of the premises.

83. It is noted that the reference to police, Centrelink and family affairs have been struck out by the Complainant. But the alleged breaches amount to:

- a. sending the tenant text messages with the intention of disrupting the [Complainant’s] quiet enjoyment of the premises;
- b. which has significantly affected the feeling of safety and security of the tenant and tenant’s child causing obvious distress on the premises threatened police have the tenant [ie the Complainant] ‘under investigation for operating a sexual business’;
- c. using insulting terms to the tenant about their career choices; and
- d. significantly affected the feeling of safety and security of the tenant and tenant’s child causing obvious distress on the premises.

84. Ms Milgate perhaps had a misunderstanding of the law in regard to prostitution in the Northern Territory.

85. It would appear from that misunderstanding Ms Milgate believed the Complainant was engaging in prostitution and that that conduct is illegal in the Northern Territory.

86. However, the *Prostitution Regulation Act* was replaced by the *Sex Industry Act* in 2019. Hence, the sex industry was decriminalised in the Northern Territory in 2019.

87. Ms Milgate, in exercising her obligations under the Act, should have researched the law before making threats and trying to evict the Complainant without any

lawful grounds to do so.

88. 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 finding¹².
89. Taking into account the contemporaneity of the date of the RT04b, the Board finds on the balance of probabilities that Ms Milgate attempted to evict the Complainant in circumstances of harassment and intimidation. Further, Ms Milgate did intimidate and threaten the Complainant by sending the three texts and making the phone call to her after sending the texts, causing interference with the Complainant's reasonable peace or privacy in her use of the Premises.
90. However unpalatable the Complainant's conduct was to Ms Milgate, there were no grounds for her to make a report to the Police, family affairs or NRAS.
91. The Complainant had a right to "quiet enjoyment of the Premises without interruption by the landlord" (s.65 of the RT Act) and secondly, a landlord must not cause interference with the reasonable peace or privacy of a tenant in the tenant's use of the Premises, except in accordance with the Act (s.66(1) of the RT Act) or force, or attempt to force, a tenant to vacate the Premises, except in accordance with this Act; or in circumstances that amount to harassment of a tenant (s.66(2) of the RT Act).
92. This right to enjoyment of Premises for all usual purposes without interference and includes but is not limited to, the right to enjoy the Premises free from harassment by the landlord or the landlord's agents¹³.
93. A deliberate and persistent attempt by a landlord to drive the tenant out of the Premises by persecution and intimidation, including threats of physical eviction is a serious interference with the tenant's right of possession, even if there is no direct physical interference with the tenant's possession and enjoyment¹⁴.
94. Depriving a tenant of their home is a serious and important matter¹⁵ which has psychological, social and legal consequences¹⁶.
95. Ms Milgate's conduct contravened Ss65 and 66 of the RT Act.
96. It also breached Rules 5(a) and 11 of Schedule 4 in the Regulations.
97. Ms Milgate's conduct was not only unprofessional towards the Complainant but also towards a member of the Office of Occupational Licensing and Associations on 9 August 2021. Such conduct breached Rule 12 of Schedule 4 in the Regulations.
98. There was a prior complaint made to the Board about Ms Milgate's conduct in

¹² Briginshaw -v- Briginshaw [1938] HCA 34; (1938) 60 CLR 336 at 362.

¹³ Martins Camera Corner Pty Ltd -v- Hotel Mayfair Ltd [1976] 2 NSWLR 15 at 23; Shkloar -v- Thomson [2015] ACAT 21 (Shkloar) at [13] – [16].

¹⁴ Spathis -v- Hanave Investment Co Pty Ltd [2002] NSWSC 304, citing Kenny -v- Preen [1963] QB 1 QB 499 at 513; Shkloar

¹⁵ Williams -v- CEO Housing (2013) 22 NTLR 88 (**Williams**) at 16, citing Crook -v- Consumer, Trader and Tenancy Tribunal (NSW) (2003) 59 NSWLR 300 at [20].

¹⁶ Williams at [18], citing Commissioner for Social Housing in the ACT -v- Canham [2012] ACAT 41.

2019. The Complainant was Wesley Dobbin who engaged Ms Milgate as his property manager for a Premises in Bellamack. He had a litany of complaints about Ms Milgate ranging from incompetency, poor financial skills, poor work ethic, harassment of the tenant and the landlord. However, this complaint did not proceed due to a lack of evidence.

99. Ms Milgate is not just a licensed agent, she is the sole director of Milgate Real Estate.
100. The purpose of a penalty under the Act is to protect the community, and welfare and reputation of the real estate industry. The penalties can have specific and general deterrent aspects.
101. In this case, Ms Milgate has breached the Act in her conduct, not only towards the Complainant but also a member of staff of the Office of Occupational Licensing and Associations.
102. The unprofessional conduct towards the Complainant was fueled by a lack of knowledge of the law and personal motivations. She was rude to both the Complainant and Officer Cassidy. She made unwarranted threats to the Complainant and attempted to evict her.
103. It is noted that Ms Milgate did not believe that she owed the Complainant an apology and that she is unable or unwilling to understand the extent of her unprofessional conduct.
104. The Board is not able to take into account the 2019 complaint. If that complaint was upheld, the Board would be considering imposing a high-end penalty on Ms Milgate.
105. The Board finds that the matters set out in paragraphs 14 – 22 above constitute:
 - (a) A failure by Ms Milgate and MRE 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 (the Act) and regulation 25 and Part 1, Schedule 4, rule 11 of the Agents Licensing Regulations 1979 (the Regulations); and
 - (b) A failure by MRE and Ms Milgate to exercise due skill, care and diligence when dealing with any person in the course of conducting business as an agent, contrary to s.65 of the Act and regulation 25 and Part 1, Schedule 4, rule 12 of the Regulations.
106. It is well recognised that a reprimand is not a trivial determination which for a professional person, has the potential for serious adverse implications¹⁷.
107. 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.

¹⁷ *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.

Fine, suspension or disqualification affect a practitioner's livelihood. A reprimand goes to their personal integrity.

108. Given Ms Milgate's situation of being the sole director of a real estate, imposing a penalty of suspension would affect her livelihood and the Board declines to order such a penalty on this occasion.
109. However, the Board found that Ms Milgate's conduct was so far below the standard of the real estate agent profession that a reprimand and a fine are appropriate in these circumstances.
110. The Board is satisfied that it is authorised to take disciplinary action against Milgate Real Estate Pty Ltd in relation to the allegations that have been made and to go on to exercise power under s.69 of the Act.
111. The Board is satisfied that it is authorised to take disciplinary action against Ms Milgate in relation to the allegations that have been made by the Complainant and Senior Compliance Officer Cassidy and to go on to exercise power under s.69 of the Act.

The Decision of the Board

112. Pursuant to s.69(1)(a) of the Act, the Board is satisfied that it is authorised to take disciplinary action and imposes a reprimand on Milgate Real Estate.
113. Pursuant to s.69(1)(a) of the Act, the Board is satisfied that it is authorised to take disciplinary action and imposes a reprimand on Ms Milgate.
114. Pursuant to s.69(1)(b) of the Act, the Board is satisfied that it is authorised to take disciplinary action and imposes a fine on Ms Milgate of 20 penalty units in the amount of \$3,140.00.

Right of Appeal

115. Section 85 of the Act provides that a person aggrieved by a decision of the Board can appeal to the Local Court.
116. An appeal application must be made within 21 days after the date the decision was issued.

Dated 14 November 2023 at Darwin



Gabrielle Martin
Deputy Chairperson
Agents Licensing Board of the Northern Territory