

PROPERTY AGENTS TRIBUNAL

No. 2013-0036T

**In the matters of the *Property Agents and
Land Transactions Act 2016*
(the Act)**

**Property Agents Board
(Applicant and Board)**

and

**Gregory Theodore Gottschalk
(Respondent and the Property Agent)**

DETERMINATION AND REASONS

Hearing:

By consent of the parties, the referral was heard and determined on the documents before the Tribunal without a formal hearing.

Tribunal:

Mr K A M Pitt QC, President

Ms P Corkhill, Member

Mr D Paton, Member

Representation:

Applicant: Mr Craig Mackie of Dobson Mitchell Allport Lawyers

Respondent: In person

Background:

1. The Respondent was at all material times a property agent for the purposes of the *Property Agents and Land Transactions Act 2006* (the Repealed Act) and later the *Property Agents and Land Transactions Act 2016* (the Act).
2. A complaint (the Original Complaint) against the Respondent was heard on appeal and decided by the Tribunal on 12 October 2015. As part of its decision, the Tribunal remitted to the Property Agents Board (the Board) for further investigation Ground 2 of the Original Complaint, broadly described as a complaint that the Respondent improperly listed properties for sale with a Northern Suburbs real estate agency (NS) when they should have been listings with an Eastern Shore real estate agency (ES), and in doing so he was acting in contravention of section 11(2) of the *Property Agents and Land Transactions Act 2005* (the Former Act).

3. As a consequence of the further investigation of Ground 2 of the Original Complaint the Board referred the following two fresh complaints to the Tribunal:

Complaint 1:

- (a) The Respondent carried out the functions of a property consultant on behalf of NS when employed by ES in contravention of section 11(2) of the *Property Agents and Land Transactions Act 2005* (the Former Act) between September 2011 and March 2012;
- (b) The Respondent directed and/or encouraged two people to accept employment with NS, carrying out the functions of property consultants, between January 2012 and March 2012 when at the same time they were employed by ES and that behaviour by the Respondent constituted Professional Misconduct for the purposes of section 93 of the Former Act; and
- (c) The Respondent, between January 2012 and March 2012, concealed or attempted to conceal that he and the Partnership Team were carrying out the functions of property consultants for NS by recording, or causing to be recorded, listings, contracts and sales under the name of a person who was not the listing or selling agent for NS and that behaviour constituted Professional Misconduct for the purposes of section 93 of the Former Act.

Complaint 2:

The Respondent failed to assist or cooperate with the Board contrary to the provisions of section 105 of the Former Act during the investigation of the Original Complaint and the re- investigation of Ground 2 of the Original Complaint (the Complaint), and that behaviour constituted Professional Misconduct for the purposes of section 93 of the Former Act.

4. The Respondent acknowledged in writing that he was guilty of complaints 1(a), (b) and (c) and complaint 2.
5. The Tribunal, having regard to the material before it including the Respondent's acknowledgment of guilt, finds the Respondent guilty of each allegation in each complaint.
6. The parties consented in writing to orders which the Tribunal might make.
7. The Tribunal considers that the orders consented to are appropriate, and makes the following Orders:
 1. That the Property Agent is prohibited from conducting all or any part of real estate agency business, property management business, or general auctioneering business for a period of 2 years in accordance with s.110(1)(e) of the *Property Agents and Land Transactions Act 2016*, such order to be wholly suspended on the following conditions:
 - 1.1 That the Property Agent commit no further breaches of his obligations as a property representative and business owner as defined in the *Property Agents and Land Transactions Act 2016*, the *Property Agents and Land Transactions Regulations 2017*, and/or the relevant Code of Conduct for a period of 2 years;

- 1.2 That the Property Agent pay a fine of \$25,000 within 90 days of the date of these orders;
and
 - 1.3 That the Property Agent pay the costs of the Board in the sum of \$40,000.00 to be paid
within 90 days of the date of these orders.
2. That if it appears to the Property Agents Board that, during the period of suspension of the Tribunal's orders, the Property Agent has breached a condition of the suspended orders, the Board may refer the alleged misconduct to the Tribunal as a complaint in accordance with s.101(7)(c) of the *Property Agents and Land Transactions Act 2016* and also may apply to the Tribunal to activate its order prohibiting the property agent from conducting all or any part of real estate agency business, property management business, or general auctioneering business for a period of 2 years in accordance with s.110(1)(e) of the *Property Agents and Land Transactions Act 2016*.

DATED: 20 January 2022



Keyran Pitt QC, President

RIGHT TO APPEAL DECISIONS OF THE TRIBUNAL

TAKE NOTICE that a person subject to the decision of this Tribunal may appeal under the *Magistrates Court (Administrative Appeals Division) Act 2001* against this decision of the Tribunal; and

An appeal is to be made within 28 days after notice of the Tribunal's decision is given to the Agent or the Board, or within such further period as a magistrate considers is appropriate in the interests of justice.

Also take notice that an appeal to the Magistrates Court (Administrative Appeals Division) **DOES NOT**

- (a) affect the operation of the Tribunal's decision; or
- (b) prevent the taking of action to implement the decision

An order of the Magistrates Court would be necessary to stay an order of the Tribunal.