

Property Agents Tribunal

In the matter of the

Property Agents and Land Transaction
Act 2016 (the Act)

and

In the matter of
Craig John Bellgrove (a Property Agent)

PROPERTY AGENTS BOARD

Applicant

CRAIG JOHN BELLGROVE

Respondent

CORRECTED DECISION AND REASONS FOR DECISION

Hearing: the matter was heard and determined upon the documents.

Tribunal:

Mr K A M Pitt KC, President
Ms R Yeoland, Member
Mr D Paton, Member

Representation:

Applicant: Mr R Parker of Tremayne Fay Rheinberger
Respondent: Mr J O'Shannessey of Murdoch Clarke

DECISION

1. The matter before this Tribunal is a complaint made by the Property Agents Board (the Board) concerning the conduct of a property agent, Craig John Bellgrove ("the property agent"). The complaint has been referred to the Tribunal pursuant to section 104(i) of the *Property Agents and Land Transactions Act 2016* (Tas) ("the Act"). A copy of the conduct complaint referral is annexed to this decision and marked with the letter "A".

2. Consequent upon negotiations between the Board and the property agent, a signed consent memorandum was provided to the Tribunal. A copy of the signed consent memorandum is annexed to this decision and marked with the letter "B".
3. The parties to the complaint referral consented to the amendment of the particulars of Complaint 2 as set out in annexure A to read:

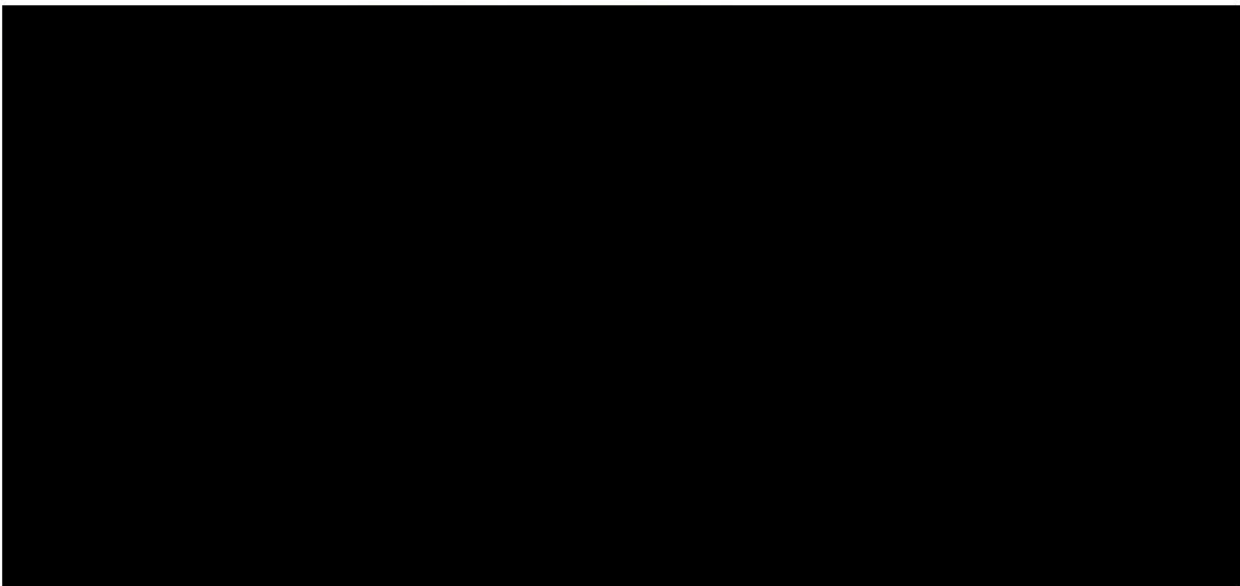
"Complaint 2 provided the Board with a false and misleading declaration.

The Respondent submitted to the Board a Trust Account Report for the six months ended 31 December 2021, which was dated 4 February 2022 that he had complied with reg. 6(1)(c) of the Regulations which was untrue and in contravention of reg 28(6)."

4. The Tribunal was provided with a copy of a report dated July 2023, from WLF Accounting and Advisory, in part demonstrating that the reference in the initial complaint 2 to a contravention of regulation 21, was mistaken and should have been a reference to *reg. 6(1)(c)*. The Tribunal is satisfied that it is proper to amend the particulars of complaint 2 in terms of the signed consent memorandum.
5. The WLF report also demonstrated to the satisfaction of the Tribunal that a large part of the irregularities the subject of the complaint was contributed to by a third-party trust accounting provider.
6. In the consent memorandum the parties consented to an order that pursuant to the above amendment of complaint 2 being made, "the respondent is guilty of unsatisfactory professional conduct as defined in section 83 of the Act in respect of complaints 1 through to 5". Having regard to the material before it, the Tribunal is satisfied that it is appropriate to find, and does find, in accordance with the facts set out in the [amended] complaint.
7. Further, having regard to the material before it, the Tribunal is satisfied that the property agent is guilty of unsatisfactory professional conduct as defined in section 83 of the Act in respect of complaints 1 through to 5. Section 83 provides the following definition:

unsatisfactory professional conduct includes conduct of a property agent when acting as a property agent that falls short of the standard of competence and

diligence that a reasonable member of the public is entitled to expect from a reasonably competent property agent.



9. Having regard to the above matters, and to the purposes of the Act including the protection of the public and the proper conduct of their occupation by property agents, the Tribunal is satisfied that it is proper to make orders in terms of the consent memorandum, and makes the following orders:

1) That the particulars of Complaint 2 be updated to say the following:

Complaint 2 provided the Board with a false and misleading declaration.

The Respondent submitted to the Board a Trust Account Report for the six months ended 31 December 2021, which was dated 4 February 2022 that he had complied with reg. 6(1)(c) of the Regulations which was untrue and in contravention of reg. 28(6).

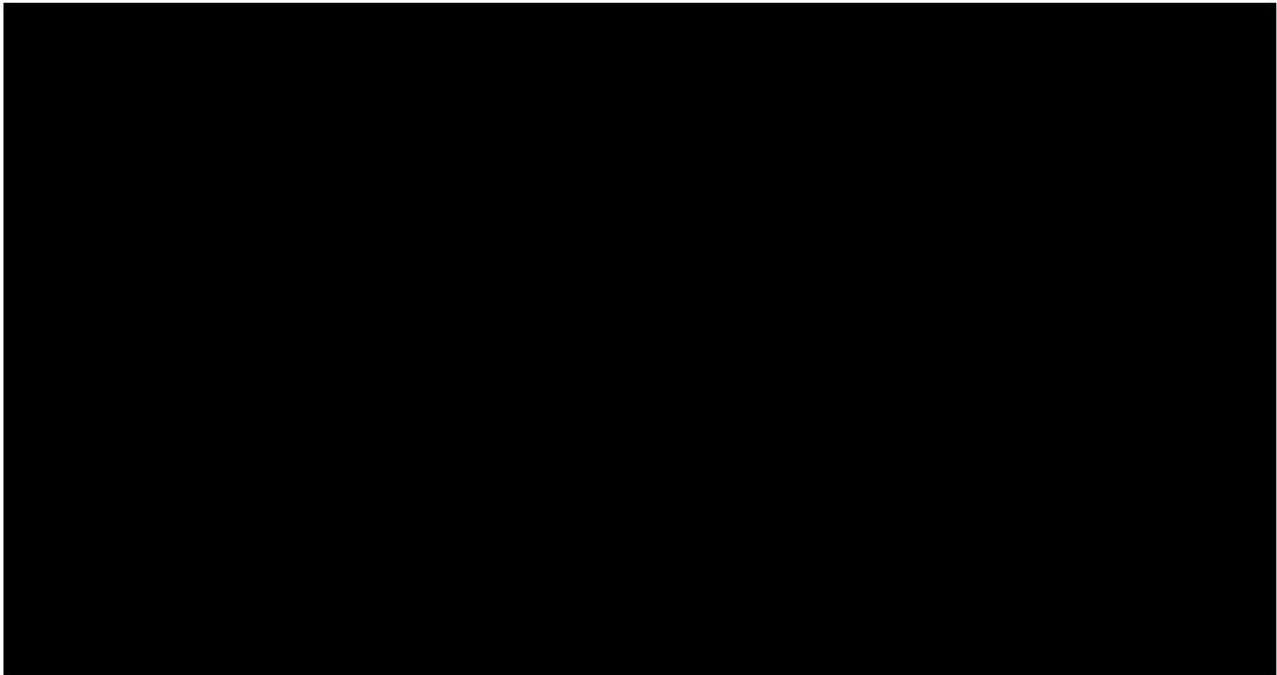
2) Pursuant to order 1 being made, the Respondent is guilty of unsatisfactory professional conduct as defined in Section 83 of the Act in respect of Complaints 1 through to 5.

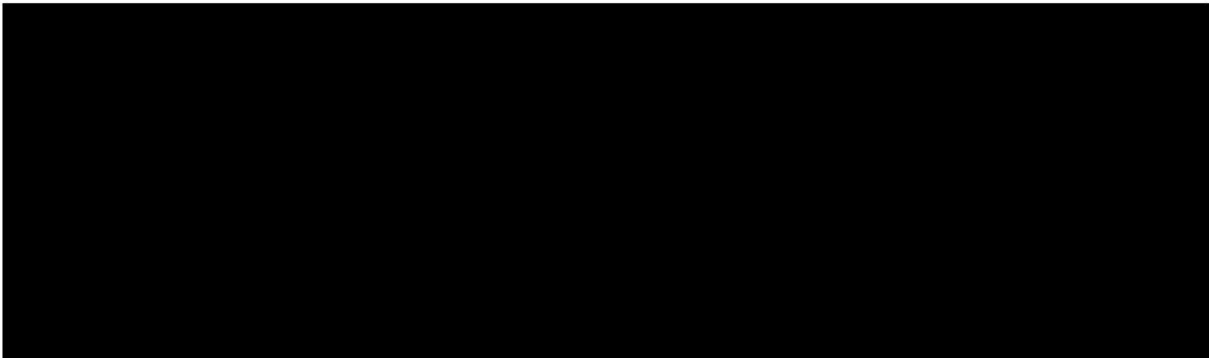
3) The Respondent is reprimanded pursuant to Section 110(1)(g) of the Act.

4) The Respondent pay a fine of \$5,000.00 within 21 days of the making of these orders, pursuant to sections 110(1)(d) and 110(2) of the Act.

5) That within:

- a. Four months of the date of these orders the Respondent complete to the reasonable satisfaction of the Applicant a minimum of a further five points of Continuing Professional Development (CPD) concerning trust accounting and trust accounting obligations, pursuant to s110(3)(b) of the Act; and
 - b. 30 days of the completion of the CPD referred to in (a), the Respondent provide the Applicant a report, written in his own words, which addresses the content of the CPD including:
 - i. Evidence of his CPD attendance or activity.
 - ii. A written summary of the outcomes/lessons learnt from this CPD; and
 - iii. A written summary of how he intends to apply those outcomes/lessons in his business.
- 6) That there be liberty to apply to amend the timeframe contained in order 5(a) if the Respondent, despite his best endeavours, is unable to complete the 5 CPD points within four months of the date of these orders.
- 7) That the Respondent will submit to inspection of all trust accounting records, documents and books of any business that the Respondent operates in his capacity as a Property Agent, for a period of 24 months from the date of order, by a person appointed by the Tribunal, pursuant to section 110(3)(a) of the Act.





11) That within 30 days from the date of these orders, the Respondent is to provide the Applicant with detailed documentation outlining Standard Operating Procedures and internal controls concerning the day-to-day management, oversight and controls of trust account money, accounts and records of any business that the Respondent operates in his capacity as a Property Agent, as defined within the *Property Agents and Land Transactions Act 2016* and *Property Agents and Land Transactions Regulations 2017* pursuant to section 110(f) of the Act.

12) That within 30 days from the date of these orders, the Respondent is to provide the Applicant with detailed documentation and procedures regarding supervision of employees of any business that the Respondent operates in his capacity as a Property Agent, pursuant to section 110(f) of the Act.

13) That the Respondent pay the Applicant's cost of the proceedings before the Tribunal, in an amount to be taxed if not agreed, pursuant to section 111 of the Act.

Dated 14 December 2023

Keyran Pitt KC
President

"A"

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

And

In the matter of
Craig Bellgrove (a Property Agent)

PROPERTY AGENTS BOARD

Applicant

CRAIG MICHAEL BELLGROVE

Respondent

CONDUCT COMPLAINT

To: The President
Property Agents Tribunal

The Property Agents Board (**the Board**) of Level 1, 15 Victoria Street, Hobart in Tasmania, hereby refers to the Tribunal, established pursuant to s. 104(1) of the *Property Agents and Land Transactions Act 2016 (the Act)*, for hearing and determination, a conduct complaint in respect of Craig Michael Bellgrove (**the Respondent**).

THE MATERIAL FACTS UPON WHICH THE COMPLAINT IS BASED ARE AS FOLLOWS:


1. At all material times, Myrtleforest Holdings Pty Ltd, ACN 618 266 943, (**the Company**):
 - a) became licensed, on 14 January 2019, as a real estate agent who is carrying on real estate agency business, and was named in Part 1, Division 1 of the Register of Property Agents maintained, by the Board, as required by s. 29 of the Act;
 - b) named its authorised place of business, as defined in the Act, as level 6, 111 Macquarie Street, Hobart, Tasmania, 7000;
 - c) identified its business name as More Tasmania and later, More Real Estate;
 - d) managed both property sales and property management.

2. The Respondent:

- a) was at all material times, licenced as a property agent, named in Part 1, Division 2 of the Register of Property Agents maintained, by the Board, as required by s. 29 of the Act;
 - b) was the sole director of the Company;
 - c) was authorised by the Board to manage the Company;
 - d) opened a trust account in or about January 2019 for or on behalf of the Company with the Australia and New Zealand Banking Group Limited, for the purpose of holding trust monies as defined in s. 133 of the Act (**the Trust Account**).
 - e) was required to, for or on behalf of the Company:
 - i. Comply with the *Property Agents and Land Transactions Regulations 2017 (the Regulations)*;
 - ii. Comply with the Code of Conduct, as published from time to time, by the Board pursuant to s. 84 of the Act.
3. In October 2019 the Respondent submitted an Audit Report Exemption to the Board, in accordance with reg. 32(1) of the Regulations, for the year ending 2019, declaring that the Company did not receive or hold trust money for the year ended 30 June 2019.
4. In November 2020 the Respondent belatedly, in contravention of the time limited in reg. 34 of the Regulations, submitted an Audit Report for year ended 30 June 2020.
5. The Respondent did not cause to be completed an Audit Report for the audit year ending 30 June 2021 (**the 2021 Audit Report**), in contravention of r. 31(1) of the Regulations within the time limited by reg. 34 (1), namely by 30 September 2021 and accordingly did not submit an Audit Report to the Board for that audit year, in contravention of reg. 37 of the Regulations.
6. By letter dated 8 October 2021 the Board requested that the Respondent provide a copy of the 2021 Audit Report or contact the Board to advise when the 2021 Audit Report would be submitted.
7. Having heard nothing from the Respondent, the Board sent a follow up email dated 1 November 2021 in relation to the 2021 Audit Report and was advised by return email that *"trust records have been delivered to our auditor and I hope to have the audit report available within a week"*.
8. By letter dated 6 December 2021 the Board again requested submission of the 2021 Audit Report by the Respondent and requested a response by no later than 13 December 2021.
9. The Respondent did not cause to be completed a Trust Account Report for the reporting period 1 July 2021 to 31 December 2021 (**the 2021 Trust Account Report**) within the time limited by reg. 28 of the Regulations, namely 31 January 2022.

10. By letter dated 16 February 2022 the Board requested that the 2021 Trust Account Report be submitted by the Respondent without further delay.
11. On 21 February 2022 the Respondent sent the 2021 Trust Account Report to the Board by email.
12. By letter dated 1 March 2022 the Board advised the Respondent that an Inspection under Part 4, Division 2 of the Regulations was to be made by the Board's Inspector of the trust account and statutory records of the Company (**The Inspection**).
13. The Inspection was triggered by the Board because of concerns that the Respondent may not have been compliant with the provisions of the Act, having not received the 2021 Audit Report but having received the 2021 Trust Account Report which contained a representation that accounts were in order.
14. The Board, by email dated 31 March 2022, again requested advice from the Respondent as to when it could expect receipt of the 2021 Audit Report and was advised by the Respondent by return, that he had collected his trust records *"from the auditor in preparation for my trust inspection appointment on Friday. Once that is complete I will attend to the auditor as priority."*
15. The Board's Inspector undertook the Inspection of the Company's trust account and statutory records for the period 1 July 2021 to 28 February 2022 on 1 April 2022 and produced a report dated 11 April 2022.
16. The Inspection revealed, amongst other things, the following:
 - a) The Respondent had contracted trust accounting support from a Queensland based company Complete Real Estate Services & Training Centre (**Complete Res**);
 - b) Complete Res completed monthly reconciliations of the trust account and emailed them to the Respondent;
 - c) The Respondent had not reviewed any monthly reconciliations received from Complete Res on a regular basis, nor ensured that supporting documents, including bank statements were attached and had not printed or certified, by signing and dating that material, as being complete and accurate for year ending 30 June 2021;
 - d) The February 2022 monthly reconciliation and supporting documentation for the property management trust account, including the bank statement printed by the Respondent, at the Inspector's request:
 - i. included a total of \$11,844.97 in unreconciled withdrawals dating back to August 2021;
 - ii. included 33 transaction adjustments, totaling \$278,736.23, representing payments or transfers which had not been recorded in the property management accounting software, dating back to 30 June 2021, with amounts up to \$50,000.00.

17. By letter dated 2 March 2022 the Board wrote to the Respondent concerning the 2021 Audit Report inviting him to show cause as to why he should not be infringed for contravening reg. 31(1) and/or reg. 37 of the Regulations (the **show cause letter**).
18. Having heard nothing from the Respondent, the Board reissued the show cause letter on 15 March 2022, providing an extension until 29 March 2022 for submissions from him.



- c) He had made a request to his accountant for the audit report to be completed but he had omitted to follow it up;

- d) He admitted that he had contravened regulation 31(1) of the Regulations and apologised.

20. At a meeting in May 2022 the Board resolved, on its own initiative, to investigate the Respondent's conduct, pursuant to s. 95 of the Act and notified the Respondent of this by letter dated 25 May 2022, seeking his response (**Complaint letter**).

21. The Complaint letter advised the conduct to be investigated as follows:

- a) Failure to adequately supervise the keeping of trust account records relating to trust money received by the Respondent and ensure the reconciliation records and schedule of ledger accounts are complete and accurate;
 - b) Failure to implement proper and appropriate systems to ensure the requirements of the Act and Regulations relating to trust money were complied with;
 - c) Failure to keep all trust account records for the Company's business at the authorised place of business;
 - d) Failure to cause the trust account records kept by the Company to be audited within 3 months of the Audit Year being 30 September 2021 by an auditor;
 - e) Provided a Trust Account Report for the six months ended 31 December 2021 dated 4 February 2022 which was to the effect that the Respondent, as the managing property agent had signed, dated and endorsed each month reconciliation within 2 days of it being reconciled as to completeness and accuracy which was untrue;

f) That the Respondent was conducting business from an address other than the authorised place of business.

22. By email dated 24 June 2022 the Respondent replied to the Board's letter of 25 May 2022 and advised:

a) In relation to points 21. a) and b) noted above the Respondent had:

- i. Contracted with Complete Res, using a software system called Property Me to undertake reconciliations, disbursements and ledger accounts which were completed on the Friday of each week, plus an end of month run;
- ii. Printed out and signed each weeks disbursements but had neglected to do the same for the end of month reports;



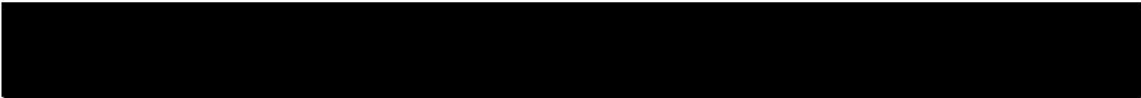
iv. Has since expanded Complete Res duties to rectify the shortcomings.

b) In relation to point 21. c) noted above, the Respondent:

- i. Accepted that he had not kept trust records at the authorised place of business;
- ii. Had become accustomed to keeping everything at his home office since Covid;
- iii. Had now rectified the deficiency.

c) In relation to point 21. d) noted above, noted:

- i. He had already admitted to this;



d) In relation to point 21. e) above, the Respondent:

- i. Agreed that the allegation was accurate;
- ii. Whilst the reports had been done and checked on time, he neglected to print and sign them;
- iii. His representation on the trust accounting report was an oversight and not a deliberate falsehood and he unreservedly apologised.

e) In relation to point 21. f) above:

- i. He has sought advice at various times from the Board with respect on how home offices and working remotely is to be treated under the Act;
- ii. Only one business address was published;
- iii. He uses a home office and a single room in The Avenue New Norfolk, neither of which has any branding or signage, phone lines and clients or customers are not received at these sites.

23. As a result of investigating the Board's Complaint, the Investigator identified breaches of the Act and the Regulations perpetrated by the Respondent and the Board is satisfied that the conduct of the Respondent amounts to more than minor misconduct for the purposes of s. 100 (c) of the Act.

24. The breaches investigated and set out in paragraph 21. herein are particularised in the complaints below:

Complaint 1 Failure to supervise the keeping of, ensure the accuracy of and endorsement of trust account records

The Respondent, consequent upon failing to implement proper and appropriate systems, failed to review prepared monthly reconciliations of the Company's trust accounts adequately, or at all; failed to ensure that the reconciliations, records and schedule of ledger accounts were accurate; and failed to endorse the records with a statement that the record was complete and accurate and his signature; in contravention of reg. 6 of the Regulations and in breach of Part 2 – Supervision of employees and persons engaged by property agent, of the Code of Conduct.

Complaint 2 Failure to act honestly by providing the Board with a false and misleading declaration

The Respondent submitted to the Board a Trust Account Report for the six months ended 31 December 2021, which was dated 4 February 2022 that he had complied with reg. 6 of the Regulations which was untrue and in contravention of his obligations pursuant to the Code of Conduct to act honestly.

Complaint 3 Failure to cause trust account records to be audited

The Respondent failed to cause the trust account records for the Company to be audited within three months from the end of the audit year ending 30 June 2021, namely by 30 September 2021 in contravention of regulation 34 (1) of the Regulations.

Complaint 4 Failed to ensure that business was conducted from the authorised place of business

In addition to the authorised place of business, the Respondent managed and/or carried on the real estate agency business at premises located at 2 The Avenue, in New Norfolk and at private premises located at 104 Myrtle Forest Road, in Collinsvale, Tasmania 7012 in contravention of section 36 of the Act.

Complaint 5 Failed to ensure trust account records stored in an appropriate place

The Respondent failed to ensure that all the trust account records for the Company were kept at the authorised place of business, or, alternatively to ensure that the Board approved the place at which the trust account records were kept, in contravention of regulation 23 of the Regulations.

25. Complaints 1 to 5 inclusive, particularised above, either individually or when considered in any combination, or as a whole, constitute unsatisfactory professional conduct which involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence, or, in the alternative, constitute conduct that falls short of the standard of competence and diligence that a reasonable member of the public is entitled to expect from a reasonably competent property agent.

The Board requests that:

- A. A Tribunal be convened in accordance with Division 5 of Part 5 of the Act for the purpose of hearing and determining the complaints against the Respondent.
- B. The President and the Tribunal take such action as may be necessary or convenient to hear and determine the complaints.
- C. The Tribunal, after hearing the complaints, take such action and make such orders under s. 110 and s.111 of the Act as the Tribunal considers appropriate.

Dated: 2 December 2022



**Belinda Webster
Acting Executive Officer
Property Agents Board**

"B"

IN THE PROPERTY AGENTS TRIBUNAL

IN THE MATTER of the *Property Agents
and Land Transactions Act 2016* (the Act)

AND IN THE MATTER of *Craig John
Bellgrove* (a Property Agent)

BETWEEN:

PROPERTY AGENTS BOARD

Applicant

and

CRAIG MICHAEL BELLGROVE

Respondent

CONSENT MEMORANDUM

By consent, the Applicant and Respondent request that the following orders be made:

1. That the particulars of Complaint 2 be updated to say the following:

Complaint 2 Provided the Board with a false and misleading declaration

The Respondent submitted to the Board a Trust Account Report for the six months ended 31 December 2021, which was dated 4 February 2022 that he had complied with re. 6(1)(c) of the Regulations which was untrue and in contravention of reg. 28(6).

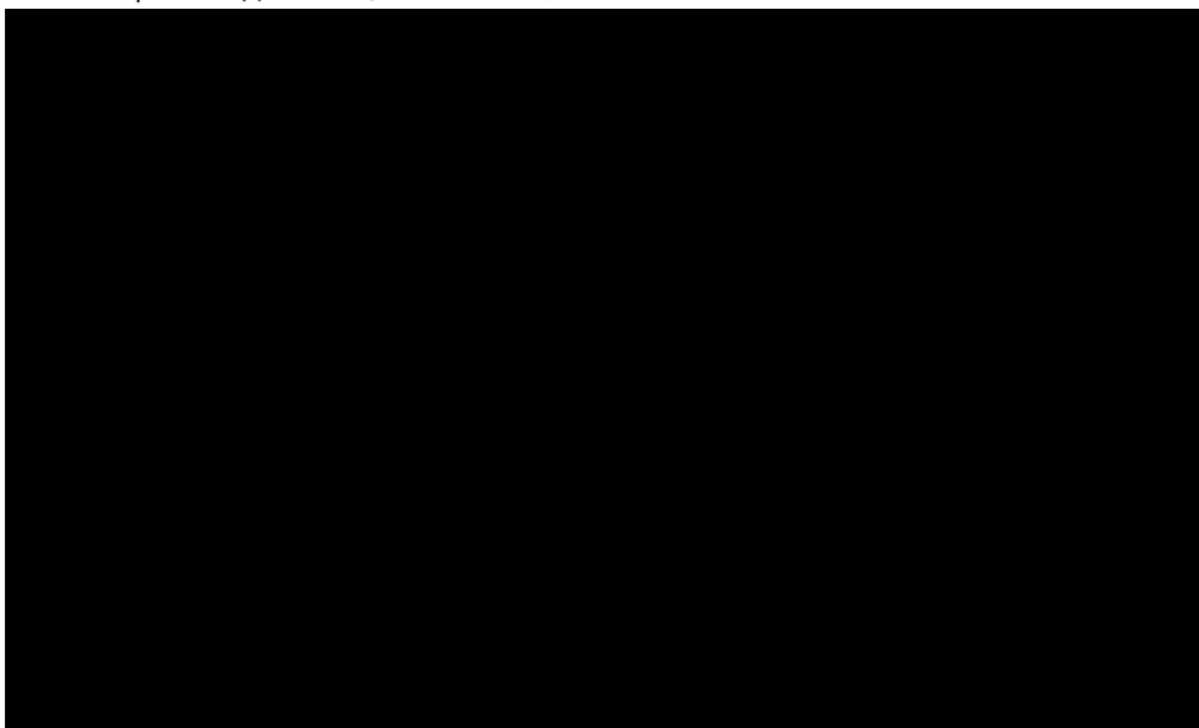
2. Pursuant to order 1 being made, the Respondent is guilty of unsatisfactory professional conduct as defined in Section 83 of the Act in respect of Complaints 1 through to 5.
3. The Respondent is reprimanded pursuant to Section 110(1)(g) of the Act.
4. The Respondent pay a fine of \$5,000.00 within 21 days of the making of these orders, pursuant to sections 110(1)(d) and 110(2) of the Act.

Filed on behalf of: **Property Agents Board**

Tremayne Fay Rheinberger Lawyers
119 Macquarie Street
HOBART TAS 7000
Email: info@tfrlawyers.com.au

Phone: (03) 6224 9888
Fax: (03) 6223 8749
Ref: 22/01189

5. That within:
 - (a) four months of the date of these orders the Respondent complete to the reasonable satisfaction of the Applicant a minimum of a further five points of Continuing Professional Development (CPD) concerning trust accounting and trust accounting obligations, pursuant to s 110(3)(b) of the Act; and
 - (b) 30 days of the completion of the CPD referred to in (a), the Respondent provide the Applicant a report, written in his own words, which addresses the content of the CPD including:
 - (i) evidence of his CPD attendance or activity;
 - (ii) a written summary of the outcomes/lessons learnt from this CPD; and
 - (iii) a written summary of how he intends to apply those outcomes/lessons in his business.
6. That there be liberty to apply to amend the timeframe contained in order 5(a) if the Respondent, despite his best endeavours, is unable to complete the five CPD points within four months of the date if these orders.
7. That the Respondent will submit to inspection of all trust accounting records, documents and books of any business that the Respondent operates in his capacity as a Property Agent, for a period of 24 months from the date of order, by a person appointed by the Tribunal, pursuant to Section 110(3)(a) of the Act.





- 11. That within 30 days from the date of these orders, the Respondent is to provide the Applicant with detailed documentation outlining Standard Operating Procedures and internal controls concerning the day-to-day management, oversight and controls of trust account money, accounts and records of any business that the Respondent operates in his capacity as a Property Agent, as defined within the *Property Agents and Land Transactions Act 2016* and *Property Agents and Land Transactions Regulations 2017* pursuant to Section 110(f) of the Act.
- 12. That within 30 days from the date of these orders, the Respondent is to provide the Applicant with detailed documentation and procedures regarding supervision of employees of any business that the Respondent operates in his capacity as a Property Agent, pursuant to Section 110(f) of the Act.
- 13. That the Respondent pay the Applicant's costs of the proceedings before the Tribunal, in an amount to be taxed if not agreed, pursuant to Section 111 of the Act.

DATED the 15th day of November 2023

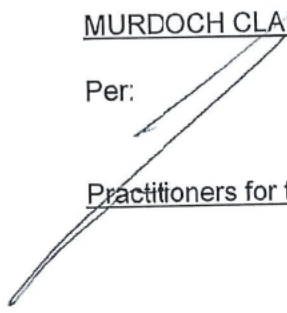
TREMAYNE FAY RHEINBERGER

Per: 

Practitioners for the Applicant

MURDOCH CLARKE

Per:



Practitioners for the Respondent