

Property Agents Tribunal

In the matter of the
Property Agents and Land Transaction
Act 2016 (the Act)
and
In the matter of
Jason Peter Andrikonis (a Property Agent)

PROPERTY AGENTS BOARD

JASON PETER ANDRIKONIS

APPLICANT

RESPONDENT

DECISION

Hearing Date: Written Submissions

Tribunal:

Mr K A M Pitt KC President

Ms R Yeoland Member

Mr D Paton Member

Delivered on: 22 July 2024

Representation:

Board: Simmons Wolfhagen, Mr N Readett

Property agent: McMullen Lawyers, Mr J McMullen

1. In its Decision and Reasons for Decision dated 28 November 2023 the Property Agents Tribunal (“the Tribunal”) the Tribunal found that a complaint made by Mr and Mrs Paine (“the complainants”) against Jason Peter Andrikonis (“the property agent”) was substantiated and that the conduct the subject of the complaint constituted unsatisfactory professional conduct.
2. Section 110 to 112 of the *Property Agents and Land Transactions Act 2016* (“the Act”) provides for the powers of consequent action which may be taken by the Tribunal. Submissions as to that action were made on behalf of the Board and of the Property Agent.
3. On behalf of the Board, it was submitted that the appropriate consequential orders would be:
 - (a) a reprimand.
 - (b) a fine of \$20,000.00. In accordance with section 110(2) of the Act, the Tribunal specify that the fine is to be paid within 3 months of these orders.
 - (c) Pursuant to section 110(3)(b) of the Act, with 60 days of these orders, the property agent undertake a course of training in ethics approved by, and completed to the satisfaction of, the Tribunal (or the Board), and within 30 days following completion of that course, the property agent provide to the Tribunal (or the Board) a written summary of the outcomes/lessons learnt from that course and how the property agent intends to apply those outcomes/ lessons in his practice as a property agent. In the event that any question shall arise as to compliance with this order, either party shall have liberty to apply to the Tribunal for further or alternative directions or orders.
 - (d) the property agent to pay to the Board costs in the sum of \$20,000.00.

4. The principal matters to be taken into account by the Tribunal are as follows.
5. For the Property Agent, it was submitted that the offence against the *Code* was one of inadvertence or ignorance of the extent his duties to the Complainants.
6. At paragraph 27 of its determination, with respect to the Property Agent's actions in propounding the clause making his appointment as property agent for the sale of the complainants' property, a condition of the proposed purchase contract of Kythera Place, the Tribunal considered that this clearly amounted to an attempt to prevent the appointment of any property agent other than himself, as the selling agent for the complainant's Biarra Court property. Further, that action clearly impacted upon the freedom of the complainants to appoint a property agent of the choice, given their wish to obtain the Kythera Place property.
7. As stated in paragraph 41 of its then decision, the Tribunal considers that a reasonable member of the public would expect that the property agent would not attempt to place himself in a position where he could not properly represent the interests of his clients. Similarly, that a reasonable member of the public would expect that the property agent would not attempt to place himself in a position where he would benefit from his appointment as selling agent for the complainants, when he could not represent their interests without compromising the interests of the Porters. The Tribunal was and is satisfied to the requisite standard that the property agent attempted to place himself in each of those positions.
8. While it was contended on behalf of the Property Agent that his training and/or the information available to him was not adequate to ensure that these obligations were present to his mind, the Tribunal considers that these are basic principles of which any competent property agent should be aware. The attempt to advance his own

interests was not inadvertent, and he should have been aware of the potential impact upon the interests of the complainants.

9. Accordingly, the Tribunal considers that this was a serious rather than an inadvertent case of unsatisfactory professional conduct.

10. The consequences of that conduct to the complainants are a relevant consideration.

There may have been disappointment suffered by the complainants because of the inability to purchase the Porter's property. However on the material before the Tribunal, that arose from the desire of the complainants to market their property on a particular basis, and the failure to reach agreement with the Porters about inclusion of a clause making that marketing a condition, in the proposed purchase contract between the complainants and the Porters. It did not appear to have arisen from the attempt by the Property Agent to ensure he was the selling agent for the complainants' property.

11. With respect to what is required to deter the Property Agent from engaging in similar conduct in the future, the Tribunal is satisfied that a fine, an award of costs, and reprimand, together with a course of training, will be sufficient personal deterrent.

12. As to a general deterrent to other property agents from acting in the same or a similar manner, the Tribunal considers that the orders which it will make should constitute a sufficient deterrent.

13. Other principal considerations are the need to maintain proper standards in the profession of property agents and to allow the public to have confidence in the maintenance of those standards, and the protection of the public. The Tribunal considers that the orders which it proposes to make will satisfy those considerations

14. At the time of the conduct in question, a penalty unit was \$172.00. Accordingly, the maximum fine provided for by the Act is \$172,000.00. A fine of \$20,000.00 represents something less than 12% of the maximum. It was submitted for the Property Agent that a penalty of that level, together with an order that he pay the Board's costs of the proceedings, would be 'catastrophic' for the Property Agent.
15. It was submitted for the Property Agent that a fine of the level proposed be wholly suspended on the condition that the Property Agent not engage in conduct of a similar nature to the conduct in the complaint within two years of the date of the order; or if not fully suspended, that he be given 12 months to pay the fine.
16. The Tribunal considers that a penalty of that amount reflects an appropriate deterrent to the profession, as well as for the property agent; however that allowing a year in which to pay the penalty, reflects proper consideration of the financial impact upon him. The Tribunal does not consider that it is appropriate to suspend the fine upon condition of good behaviour,
17. As to costs, the Property Agent did not contest the quantum of costs incurred by the Board.
18. It was submitted for the Property Agent that there was an allegation that the Property Agent did have to contest with the Board in the proceedings, but which did not, in the end, come to the Hearing and, as a result, the Tribunal made no finding. Contention 2 (i),(ii) and (iii) (b) of the Board's referral was that the Property Agent sought he be appointed as a property agent for the Complainants whilst he "know or should have known that the complainants were the clients of another agent than the Property Agent". This was a specific allegation of breach of paragraph 12(2) of the

Code, which the Board abandoned in the proceedings. The Tribunal considers that this was a minor aspect and does not appreciably affect the issue of costs.

19. The Tribunal takes into account that these proceedings probably have had an effect upon the property agent's health and family, and further that he has been put to expense in defending the proceedings and that a fine of \$20,000.00 will cause him financial difficulty.

Orders

20. Taking into account all the above matters, and in the exercise of its discretion, the Tribunal makes the following orders:

- (a) Pursuant to section 110 (1)(g) of the Property Agents and Land Transactions Act 2016 ("the Act"), the property agent is reprimanded.
- (b) Pursuant to section 110(d) of the Act, the property agent is to pay a fine of \$20,000.00. In accordance with section 110(2), the Tribunal specifies that the fine is to be paid within 12 months of these orders.
- (c) Pursuant to section 110(3)(b) of the Act, within 60 days of these orders, the property agent is to undertake a course of training in ethics approved by, and completed to the satisfaction of, the Board, and within 30 days following completion of that course, the property agent is to provide to the Tribunal a written summary of the outcomes/lessons learnt from that course and how the property agent intends to apply those outcomes/ lessons in his practice as a property agent. In the event that any question shall arise as to compliance with this order, either party shall have liberty to apply to the Tribunal for further or alternative directions or orders.

(d) Pursuant to section 111 of the Act, the property agent to pay to the Board its costs in the sum of \$20,000.00.

Dated 22 July 2024

A handwritten signature in black ink, appearing to read 'Keyran Pitt', with a large, stylized flourish at the end.

Keyran Pitt KC, President