

No 2021-0074T

In the Matter of the *Property Agent and Land Transactions Act 2016* (the Act)

Property Agents Board
(Applicant and Board)

And


(a Property Agent)

PROPERTY AGENTS BOARD

Applicant



Respondent

DECISION AND REASONS FOR DECISION

Tribunal:

Mr K A M Pitt QC, President
Ms R Yeoland, Member
Ms J Cranston, Member

Representation:

Applicant: Mr Chris Groves of Dobson Mitchell Allport
Respondent: Mr Stuart Wright of Bold Lawyers

DECISION

Background

This matter comes before the Property Agents Tribunal (the Tribunal) as a referral by the Property Agents Board (the Board) pursuant to section 100 of the *Property Agents and Land Transactions Act 2016* (the Act).

The relevant facts are admitted and are set out in the Conduct Complaint Referral, which is reproduced as follows:

1. The Respondent was at all material times a property agent for the purposes of the Act.
2. At all material times, [REDACTED] (the Company) was a company registered as a Tasmanian real estate agency in accordance with Section 30 of the Act.
3. The Company traded under the business name [REDACTED] at which time the Company began to trade under the business name [REDACTED]. At all material times, the Company was based in [REDACTED] Tasmania.
4. At all material times, the Qualified Director and managing Real Estate Agent of the Company was the Respondent.
5. Part of the Respondent's role as property agent was to manage properties on behalf of their owners. This involved numerous tasks, including the following:
 - (a) Select tenants and sign Tenancy Agreements for the premises on the owner's behalf;
 - (b) Receive rents due and issue receipts for moneys collected;
 - (c) Exercise the owner's rights to terminate tenancies or leases, serve notices and issue appropriate notices;
 - (d) Carry out all necessary proceedings for the eviction of tenants;
 - (e) Recover any monies due in respect to the management of the said premises;
 - (f) Re-let at the end of each tenancy in the event of a vacancy;
 - (g) Advertise the availability for rental or lease of the said premises;
 - (h) Hire and discharge on the owner's behalf all labour and employees necessary for the proper maintenance of the said property;
 - (i) Carry out all urgent and necessary repairs without the owner's prior authority; and
 - (j) Pay on the owner's behalf all outgoings as specified.
6. In accordance with clause 6 of the relevant Code of Conduct, the Respondent was required to diligently supervise her employees, and, whilst she was entitled to delegate tasks to those employees, she was ultimately responsible for their conduct.

COMPLAINT BY [REDACTED]

7. At all material times, [REDACTED] were the registered owners of a property located at [REDACTED] in Tasmania and [REDACTED] in Tasmania.
8. On or about 10 January 2020 the [REDACTED] engaged the Company to lease and manage the [REDACTED] Road property and the [REDACTED] Street property on their behalf.
9. The [REDACTED] Street Property was never leased by the Company on behalf of the [REDACTED].

10. On 19 June 2020, the Respondent installed a tenant in the [REDACTED] Road property on a 12 month lease agreement. A bond of \$760 was paid to the Rental Deposit Authority by the tenant in accordance with Section 25 of the *Residential Tenancy Act 1997*.
11. In October 2020, the tenant abandoned the [REDACTED] Road property, leaving it requiring extensive cleaning, maintenance to the garden, and requiring rubbish to be removed. The Respondent became aware that the tenant had abandoned the property on 25 November 2020. The Respondent failed to apply to the Magistrates Court of Tasmania for an order declaring the [REDACTED] Road property abandoned and for an order delivering vacant possession [REDACTED] in accordance with Section 47A of the *Residential Tenancy Act 1997*.
12. The [REDACTED] instructed the Respondent to arrange costs associated with the abandonment of the tenancy to be deducted from the tenant's bond. The Respondent did not promptly make a claim against the bond to the Residential Tenancy Commissioner as instructed but instead returned the bond monies to the tenant. The Respondent should have lodged a claim against the bond for advertising, cleaning, gardening, rubbish removal, general maintenance and outstanding rent until a new tenant was found or the agreement between the [REDACTED] and the original tenant had expired.
13. The [REDACTED] had landlord insurance with Shannons Pty Ltd (Shannons).
14. The Respondent was instructed to provide information to support the [REDACTED] claim to Shannons against their landlord insurance policy for monies lost in connection with the abandonment of the [REDACTED] Road property. The Respondent failed to do this. The Respondent also caused false information to be provided to the insurer by email dated 17 December 2020 to the financial detriment of the [REDACTED] as follows:

"I confirm that the tenant is not liable for rent passed (sic) 25/11/2020 as he returned keys to us on this date at which point the Owner, [REDACTED] released the tenant from the lease agreement therefore severing his liability to the property."
15. On 21 January 2021, the [REDACTED] lodged a complaint with the Board against the Respondent.
16. By letter dated 22 March 2021, the Board gave the Respondent notice of the [REDACTED] complaint and requested that the Respondent provide a written submission in response to those allegations.
17. A written submission from the Respondent was received by the Board's Executive Officer on 26 March 2021.
18. The Respondent gave the Board the following false and/or misleading information in her submission dated 23 March 2021:

[REDACTED] *is in receipt of Landlord Support Fund funding of \$733 to cover the arrears this tenant cost his him (sic) for abandoning his property; and*

We advised Shannon's Insurance that [REDACTED] had been awarded successful funding from the Landlord Support Fund and therefor (sic) there was no loss of rent left to claim; and

In the end the bond was released to the tenant as we had no legal reason to retain it or disburse to any other creditor."

19. On 26 July 2021, the Executive Officer gave the Respondent notice of her resolve to investigate the [REDACTED] complaint and requested that the Respondent provide copies of the entire files for both properties.
20. It became apparent to the Board appointed Investigator (the Investigator) that the information provided in response to the request of 26 July 2021 was deficient, and so a notice dated 3 September 2021 was issued to the Respondent pursuant to Section 97 of the Act, which required the Respondent to provide further written information and documents to the Board, including in the form of a statutory declaration.
21. Further information was received from the Respondent on 21 September 2021.
22. The Investigator provided a report to the Board on 20 October 2021.
23. Following receipt of the Investigator's report, the Board was satisfied the Respondent's conduct as a property agent acting for the [REDACTED] was such that she was guilty of unsatisfactory professional misconduct and/or professional misconduct as defined in Section 83 of the *Property Agents and Land Transactions Act 2016* in that she:
 - (a) Failed to ensure the [REDACTED] Road property was adequately managed and supervised;
 - (b) Failed to promptly lodge an appropriate claim against a bond with the Residential Tenancy Commissioner;
 - (c) Failed to follow instructions to provide information to the [REDACTED] insurer;
 - (d) Caused false information to be provided to the [REDACTED] insurer to the detriment of the [REDACTED] and
 - (e) Provided false and/or misleading information to the Board.

COMPLAINT BY [REDACTED]

24. At all material times, [REDACTED] was the registered owner of a property located at [REDACTED] in Tasmania (the [REDACTED] Street property).
25. On or about 20 December 2017, [REDACTED] engaged the Company to lease and manage the [REDACTED] Street property on her behalf.
26. On 3 May 2019, the Company installed a tenant into the [REDACTED] Street property. The tenant remained in the property until 14 June 2021.
27. The agreement between the Company and [REDACTED] was finalised on or about 25 March 2021.
28. On 16 March 2021, [REDACTED] lodged a complaint with the Board against the Respondent.

29. By letter dated 17 March 2021, the Board gave the Respondent notice of [REDACTED] complaint and requested that the Respondent provide a written submission in response to those allegations.
30. A written submission from the Respondent was received by the Board's Executive Officer on 20 March 2021.
31. On 4 August 2021, the Executive Officer gave the Respondent notice of her resolve to investigate [REDACTED] complaint.
32. It became apparent to the Investigator that the information provided by the Respondent in response to the request dated 17 March 2021 was deficient, and so a notice was served on the Respondent pursuant to Section 97 of the Act, which required the Respondent to provide further written information and documents to the Board, including in the form of a statutory declaration.
33. The Investigator provided a report to the Board on 17 November 2021.
34. Following receipt of the Investigator's report, the Board was satisfied the Respondent's conduct as a property agent acting for [REDACTED] was such that she was guilty of unsatisfactory professional misconduct and/or professional misconduct as defined in Section 83 of the *Property Agents and Land Transactions Act 2016* in that she:
 - (a) Failed to reduce her management fees from 1 July 2020 despite undertaking to [REDACTED] to do so on numerous occasions;
 - (b) Failed to satisfactorily communicate with [REDACTED] about the [REDACTED] Street property;
 - (c) Failed to provide inspection reports concerning numerous maintenance issues at the [REDACTED] Street property to [REDACTED];
 - (d) Failed to follow instructions from [REDACTED] in relation to the maintenance of the [REDACTED] Street Property; and
 - (e) Dishonestly told the tenants of the [REDACTED] Street property that [REDACTED] had refused to have maintenance on the property carried out.

COMPLAINT BY [REDACTED]

35. At all material times, [REDACTED] was the tenant of a property located at [REDACTED] in Tasmania (the [REDACTED] property).
36. At all material times, the [REDACTED] property was managed by the Company.
37. On or about 20 November 2020, [REDACTED] entered into a 12 month lease of the [REDACTED] property. [REDACTED] served a notice to terminate the lease on 21 January 2021, and she vacated the property on 2 February 2021.
38. On 12 April 2021, [REDACTED] lodged a complaint with the Board against the Respondent.

39. By letter dated 13 April 2021, the Board gave the Respondent notice of [REDACTED] complaint and requested that the Respondent provide a written submission in response to those allegations.
40. Additional information subsequently received from the Complainant was provided by the Board to the Respondent on 27 April 2021.
41. A written submission from the Respondent was received by the Board's Executive Officer on 11 May 2021.
42. The Respondent provided false or misleading information to the Board in her submission dated 11 May 2021 and in a further submission to the Board's Investigator in an Affidavit dated 8 October 2021.
43. The Respondent stated the following in her submission dated 11 May 2021:

"Unfortunately, in terms of the gutters requiring repair this was indicated on the ingoing inspection report (completed before the Complainant's tenancy commenced on 20 November 2020) but never reported by [REDACTED] as an urgent maintenance item to be attended to in our normal maintenance procedures. This was not brought to my attention until I attended to the property to conduct the outgoing inspection."

The outgoing inspection was completed on or about 2 February 2021.

44. The Respondent stated the following in her Affidavit dated 8 October 2021:

".. [REDACTED] did not request consent from the owner to repair the gutters nor did she raise with me (as trained to do that this needed attention by the owner)."

45. The statements provided in paragraphs 43 and 44 were untrue. Material evidence provided by the Respondent pursuant to the Section 97 notice included information that the previous tenant reported an issue with the gutter to the Property Agent on 1 September 2020.

Several entries relating to the gutter issue appear in the electronic file on that date, including a quotation request from the Respondent to [REDACTED] *Property Maintenance Service*" for gutter repair/replacement.

A copy of a quotation from [REDACTED] dated 15 October 2020, amongst other things, supply and fit 46.6 metres of new guttering around the entire house was provided to the Board by the Respondent.

On 26 October 2020, the owners emailed an employee of the Company requesting that he check:

"if there is any other work needing to be done whilst the scaffolding is in place for the guttering and facia board work is (sic) being undertaken"

On 27 October 2020, the owners emailed the Respondent:

" [REDACTED] and I would like to both speak with you together to discuss the whole range of repairs and alterations proposed for our property would you be available around midday on Friday"

46. On 23 September 2021, the Executive Officer gave the Respondent notice of her resolve to investigate [REDACTED] complaint, and at the same time, a notice was served on the Respondent pursuant to Section 97 of the Act, which required the Respondent to provide further written information and documents to the Board, including in the form of a statutory declaration.
47. Further information was provided by the Respondent on 8 October 2021.
48. The Investigator provided a report to the Board on 17 November 2021.
49. The Board determined that the Respondent's conduct towards [REDACTED] and the Board was unsatisfactory in that the Respondent:
 - (a) Caused the [REDACTED] property to be leased to [REDACTED] in circumstances where she knew or ought to have known the condition of that property breached the provisions of the *Residential Tenancy Act 1997*;
 - (b) Failed to satisfactorily communicate with [REDACTED] about the [REDACTED] property;
 - (c) Failed to arrange for maintenance work to be conducted in relation to the [REDACTED] property within a reasonable time; and
 - (d) Provided false or misleading information to the Board

COMPLAINT BY [REDACTED]

50. At all material times, [REDACTED] rented a property at [REDACTED]. That property was at all material times owned by the [REDACTED] (the Council). The Company was employed by the Council to manage the property.
51. A complaint against the Respondent was lodged with the Board [REDACTED] on 21 January 2021.
52. By letter dated 5 February 2021, the Board gave the Respondent notice of the complaint of [REDACTED] and requested that the Respondent provide a written submission in response to those allegations.
53. An undated written submission from the Respondent was received by the Board's Executive Officer on 2 March 2021.

54. The Respondent provided false or misleading information to the Board in her submission received on 2 March 2021.
55. The Respondent stated the following in her submission:
- "We did suggest at one point that if the tenants were unable to remedy the breaches that they may be better off in a Public Housing scenario and this was under the direction and agreement of the landlord."*
56. The statement provided in paragraph 55 was untrue.
57. In an email to the General Manager of the Council dated 7 September 2020, the Respondent stated:
- "We do as a matter of course advise tenants that cleanliness and caring for the home or lack their (sic) of does jeopardise their tenancy. Is this a comfortable stand point by Council? I was discussing this matter with the father of [REDACTED] who lives in this unit I reiterated that this was not a supported living environment and that they needed to core for the property accordingly and if they couldn't then maybe then (sic) needed to consider going into a supported living environment.*
- The reason I am advising you of this conversation as this is our standard conversation for Routine Inspection follow ups. So if this is not what Council wants we do need to know so that we can adjust our dialogue accordingly."*
58. The comments made to [REDACTED] father were not "under the direction and agreement of the landlord"; rather, the Respondent retrospectively requested the landlord's approval after the instruction had been given.
59. On 8 September 2021, the Board gave the Respondent notice of her resolve to investigate [REDACTED] complaint, and at the same time, a notice was served on the Respondent pursuant to Section 97 of the Act, which required the Respondent to provide further written information and documents to the Board, including in the form of a statutory declaration.
60. As a result of her investigation, it became apparent to the Investigator that [REDACTED] suffered from disabilities and that there was a reasonable expectation that the Respondent should have been aware of this. The Investigator determined that the Respondent's conduct towards [REDACTED] was at times disrespectful, intimidating, and rude. The Investigator also determined the Respondent had been needlessly aggressive towards [REDACTED], including by insisting [REDACTED] pay rent which the Respondent wrongly claimed was in arrears.
61. The Investigator provided a report to the Board on 17 November 2021.
62. Following receipt of the Investigator's report, the Board was satisfied the Respondent's conduct as a property agent acting for the Council was such that she was guilty of unsatisfactory professional conduct as defined in Section 83 of the *Property Agents and Land Transactions Act 2016* in that:

- (a) Her conduct towards [REDACTED] was not of a reasonable standard of competence and diligence and in breach of the following provisions of the relevant Code of Conduct:
- i. 18(b) property agent using or allowing others to use threatening or intimidating language or behaviour towards a client or customer; and
 - ii. 19(k) treat and demonstrate respect to clients, customers and colleagues; and
- (b) The Respondent provided false and/or misleading information to the Board in her submission received on 2 March 2021.

COMPLAINTS:

63. The Board's complaints against the Respondent are as follows:

Complaint 1: Conduct not of a reasonable standard of competence and diligence.

The Respondent's conduct as a property agent acting for [REDACTED] between on or about 15 October 2020 and 3 February 2021 in relation to a property located at [REDACTED] was such that she is guilty of unsatisfactory professional misconduct and/or professional misconduct as defined in Section 83 of the *Property Agents and Land Transactions Act 2016* in that she:

- (a) Failed to ensure the [REDACTED] Road property was adequately managed and supervised;
- (b) Failed to promptly lodge an appropriate claim against a bond with the Residential Tenancy Commissioner;
- (c) Failed to follow instructions to provide information to the [REDACTED] insurer;
- (d) Caused false information to be provided to the [REDACTED] insurer to the detriment of the [REDACTED]; and
- (e) Provided false or misleading information to the Board.

Complaint 2: Conduct not of a reasonable standard of competence and diligence.

The Respondent's conduct as a property agent acting for [REDACTED] between on or about 24 March 2020 and on or about 15 March 2021 in relation to a property located at [REDACTED] was such that she is guilty of unsatisfactory professional misconduct and/or professional misconduct as defined in Section 83 of the *Property Agents and Land Transactions Act 2016* in that she:

- (a) Failed to reduce her management fees from 1 July 2020 despite undertaking to [REDACTED] to do so on numerous occasions;
- (b) Failed to satisfactorily communicate with [REDACTED] about the [REDACTED] property;
- (c) Failed to provide inspection reports concerning numerous maintenance issues at the [REDACTED] Street property to [REDACTED].

- (d) Failed to follow instructions from [REDACTED] in relation to the maintenance of the [REDACTED] Street Property; and
- (e) Dishonestly told the tenants of the [REDACTED] Street property that [REDACTED] had refused to have maintenance on the property carried out.

Complaint 3: Conduct not of a reasonable standard of competence and diligence.

The Respondent's conduct as a property agent managing a property located at [REDACTED] [REDACTED] in Tasmania between 11 May 2020 and 21 January 2021 was such that she is guilty of unsatisfactory professional misconduct and/or professional misconduct as defined in Section 83 of the *Property Agents and Land Transactions Act 2016* in that:

- (a) Her conduct towards [REDACTED] being the tenants of that property, was not of reasonable standard of competence and diligence and not in compliance with the Respondent's obligations under clauses 18(b) and 19(k) of the relevant Code of Conduct; and
- (b) She provided false and/or misleading information to the Board.

Complaint 4: Conduct not of a reasonable standard of competence and diligence.

The Respondent's conduct towards [REDACTED] in her capacity as a property agent managing a property located at [REDACTED] in Tasmania between on or about 20 November 2020 and on or about 2 February 2021 was such that she is guilty of unsatisfactory professional misconduct and/or professional misconduct as defined in Section 83 of the *Property Agents and Land Transactions Act 2016* in that she:

- (a) Caused the [REDACTED] property to be leased to [REDACTED] in circumstances where she knew or ought to have known the condition of that property breached the provisions of the *Residential Tenancy Act 1997*;
- (b) Failed to satisfactorily communicate with [REDACTED] about the [REDACTED] property;
- (c) Failed to arrange for maintenance work to be conducted in relation to the [REDACTED] [REDACTED] property within a reasonable time; and
- (d) Provided false and/or misleading information to the Board.

CONSIDERATION

- 64. The Respondent acknowledged that she was guilty of the conduct alleged in each complaint. The facts supplied to the Tribunal by the parties support that acknowledgement, and the Tribunal makes a finding that the Respondent is guilty of the conduct alleged in each complaint.

65. Matters relating to the Respondent's personal medical history were placed by way of mitigation before the Tribunal, and the Tribunal accepts the substance of those matters. It is unnecessary to detail those matters in this decision other than to say that they related to the Respondents health, the current stability of her health, and the fact that she is receiving and has undertaken to continue to receive treatment for the relevant conditions.
66. The Board and the Respondent reached agreement upon orders which the Tribunal could make should it see fit.
67. The Tribunal notes particularly that the conditions for which the Respondent is receiving and has undertaken to receive continued treatment are relevant to the conduct complained of. The Tribunal takes into account that the Board was conscious of these matters in consenting to the proposed orders. But for this, having regard to the conduct concerned, the Tribunal would have considered more stringent orders.
68. Having regard to all of the relevant facts, including the material placed before it by way of mitigation, the Tribunal is satisfied that it is appropriate for the protection of the public and the proper regulation of property agents to make the following orders the subject of the consent reached between the parties.

ORDERS

69. 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 Section 110(1)(e) of the *Property Agents and Land Transactions Act 2016*, such order to be wholly suspended on the following conditions:
 - i. That the Property Agent commit no further breaches of her 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;
 - ii. That the Property Agent receive regular counselling, treatment and support from the medical practitioner named in, and in accordance with, her written agreement with the Property Agents Board dated 24 June 2022;
 - iii. That the Property Agent pay a fine of \$5,000 on or before 30 June 2023;
 - iv. That the Property Agent pay a contribution towards the costs of the Board in the sum of \$7,500 on or before 30 June 2023.
 - v. These orders run concurrently with the orders made against the Property Agent in relation to the matter 2021-0076T.
 - vi. 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 Section 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 Section 110(1)(e) of the *Property Agents and Land Transactions Act 2016*.

Dated 8 August 2022

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

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.