

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

and

**In the matter of
Antony Peter Manton (a Property Agent)**

PROPERTY AGENTS BOARD

Applicant

ANTONY PETER MANTON

Respondent

DECISION AND REASONS FOR DECISION

Hearing Date: 2 June 2022

Tribunal:

Mr K A M Pitt QC, President
Ms P Corkhill, Member
Ms J Cranston, Member

Representation:

Applicant: Mr A Walker of Counsel and Ms C Barclay of Tremayne Fay Rheinberger
Lawyers
Respondent: Ms J Sawyer and Mr B Mescher of Landers and Rogers

DECISION

Background

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

1. The Property Agents Board (the Board) referred a conduct complaint in respect of Antony Peter Manton (the Respondent) to the Tribunal pursuant to section 101 of the *Property Agents and Land Transactions Act 2016* (the Act), for hearing and determination.
2. The Respondent was at all material times a Real Estate Agent part 1 (2) of the Register for the

purposes of the *Property Agents and Land Transactions Act 2016 (the Act)*.

3. The Respondent was a director of Ant Farm Tasmania Pty (**Ant Farm**), which was from 2 February 2012 registered as a Real Estate Agent part 1 (1) of the Register until 28 September 2020.
4. The Respondent became the managing agent and the qualified director for Ant Farm on 18 March 2016, which was the date the Respondent obtained his real estate agent licence.
5. Ant Farm operated business under the franchise Ray White (Hobart).
6. On 15 July 2020 the Respondent and Ant Farm signed an agreement for the sale of the business to Hobart Business Brokerage Pty Ltd (**HBB**).
7. The Board was advised of the sale and on 28 September 2020, the Register was updated to record the Respondent as a real estate agent employed by HBB.
8. Ant Farm was removed from the Register, and the Respondent was informed of this by letter from the Board dated 30 September 2020. On this date, Ant Farm ceased to operate a business as a property agent.
9. Regulation 8 (2) of the *Property Agents and Land Transactions Regulations 2017* provides that:

“When a person ceases to carry on the business of a property agent...but the person holds trust money in a trust account, the person...must, with the written approval of the parties to the transaction to which the money relates, immediately disburse the trust money –

(a) to the trust account of another property agent; or

(b) to the trust account of a legal practitioner, or licensed conveyancer, acting for either of the parties to the transaction.”
10. As at 28 September 2020, Ant Farm maintained a trust account, as required by s 135 of the Act, in which there was held \$130,000 in trust money.
11. Prior to 4 February 2021, all trust money was disbursed with written approval from the Ant Farm trust account except:
 - (a) \$53,000 being the deposit on the sale of a property at 112 Grove Road Glenorchy; and
 - (b) \$10,000 being the deposit on the sale of a property at 15 Penola Drive Leslie Vale.

Complaint - 112 Grove Road

12. On 4 February 2021 the Respondent as director of Ant Farm transferred the sum of \$53,000 to the trust account of HWL Ebsworth Lawyers with the approval of the vendor (LSD Investments Pty Ltd), but without the approval of the purchaser.
13. The approval of the purchaser was not obtained until 28 June 2021.
14. Ant Farm, and the Respondent, breached regulation 8(2) and thereby committed an offence, in that:

- (a) As a director of Ant Farm, he caused the sum of \$53,000 to be disbursed on 4 February 2021 from the Ant Farm trust account without the written approval of the parties to the transaction; and
- (b) As a director of Ant Farm, he failed to cause the sum of \$53,000 held in the Ant Farm trust account to be disbursed immediately following Ant Farm ceasing to carry on the business of a property agent on 28 September 2020.

The Respondent is accordingly guilty of professional misconduct or unsatisfactory professional conduct as defined in s 83 of the Act.

Complaint - 15 Penola Drive

- 15. On 18 January 2021, Ant Farm was provided with an approval from the purchaser's legal practitioners (Douglas & Collins Lawyers) to disburse the deposit funds to the vendor's legal practitioners, Tierney Law Hobart.
- 16. Ant Farm did not disburse the sum of \$10,000 or any sum to Tierney Law Hobart, nor did it seek approval to do so from that legal practice.
- 17. On 16 January 2021 Ant Farm disbursed the sum of \$10,000 from its trust account into another non trust account operated by Ant Farm numbered 017 010, a/c 3110 00534.
- 18. Ant Farm, and the Respondent, breached regulation 8(2) and thereby committed an offence in that:
 - (a) As a director of Ant Farm, he caused the sum of \$10,000 to be disbursed on 16 January 2021 from the Ant Farm trust account without the written approval of the parties to the transaction;
 - (b) As an alternative to (a) as a director of Ant Farm, he failed to disburse the sum of \$10,000 to the vendor's legal practitioners in accordance with approval from the purchaser's legal practitioners to do so;
 - (c) As a director of Ant Farm, he caused the sum of \$10,000 to be disbursed on 16 January 2021 from the Ant Farm trust account to another account maintained by Ant Farm; and
 - (d) As a director of Ant Farm, he failed to cause the sum of \$10,000 held in the Ant Farm trust account to be disbursed immediately following Ant Farm ceasing to carry on the business of a property agent on 28 September 2020.

The Respondent is accordingly guilty of professional misconduct or unsatisfactory professional conduct as defined in s 83 of the Act.

Admission of guilt

- 19. By affidavit sworn the 21 April 2022, the Respondent stated that he admitted to and was remorseful for his breaches of the *Property Agents and Land Transactions Regulations 2017* (Tas) in relation to the properties set out in the Conduct Complaint Referral.

20. Having regard to those admissions, and to the facts set out in the uncontested affidavit of Alicia Hutton sworn 11 March 2022, the Tribunal finds in accordance with the facts set out in the Conduct Complaint Referral and the Affidavit of Ms Hutton.

Consent to orders

21. By a Consent Memorandum dated 3 May 2022, signed by the solicitors for the applicant and the Respondent, it was stated:
1. At the hearing of the complaint the applicant will seek, and the Respondent does not intend to oppose, the making of a declaration that the Respondent is guilty of unsatisfactory professional conduct in respect of:
 - (a) The conduct complained of in respect of the 15 Penola Drive property transaction; and
 - (b) The conduct complained of in respect of the 112 Grove Road property transaction.
 2. The applicant no longer seeks a declaration that the Respondent is guilty of professional misconduct.
 3. The Respondent agrees to pay the applicant's costs of \$6,000.00 within 45 days of the order of the Tribunal.

Consideration of appropriate action

22. The Tribunal takes into account the contents of the affidavit sworn by the Respondent on 21 April 2022. That affidavit deposes to the following matters relevant to the appropriate action for the Tribunal to take.
- (a) The Respondent has spent approximately 20 years working in the real estate industry.
 - (b) In the years from 2013 to 2020, he received awards from his employer, showing that he performed at a high level as an agent. He held a Tasmanian real estate agent licence since 18 March 2016 and prior to that, a property representative licence.
 - (c) The breaches of the regulations on the subject of the referral took place in the context of an ongoing dispute with a purchaser of his previous business, who, contrary to his expectation and understanding, did not formally engage him as an employee. On 20 October 2020, that purchaser terminated the relationship with him.
 - (d) He had understood he would receive commissions on sales of properties he had negotiated in his former business, from the purchaser of that business, but did not do so. There is a continuing dispute as to those, and he contended he was owed \$70,737 in commissions.
 - (e) He was frank and collaborative with the Board with respect to the breaches.

- (f) With respect to the transfer of the \$53,000 deposit for the purchase of 112 Grove Road Glenorchy from one of his company accounts to the trust account of the vendor's solicitors, he relied upon an email from an employee of the vendor stating that all owners had given their permission for the deposit monies to be dealt with. He believed that the appropriate consents had been obtained and mistakenly failed to obtain written consent from the purchaser prior to transferring the funds.
 - (g) With respect to the \$10,000 deposit received for the purchase of the 15 Penola Drive property, he believed that the vendors had provided their consent to the deposit money being used following settlement of the sale, to reduce or discharge sales commission costs of \$10,260 payable by them in respect of that sale.
 - (h) He was in a difficult asset position and was repaying a loan of approximately \$80,000 for legal expenses.
- 23. An affidavit sworn by another licence real estate agent, testifying to the Respondent's generally good character, was also attended.
 - 24. The Respondent's legal representative Ms Sawyer emphasised these matters on his behalf in her submissions to the Tribunal. In addition she submitted that there was little risk to the public arising out of either transaction, and further that there was little risk to the public of further inappropriate dealings with trust monies by the Respondent, as he was currently employed as an agent not dealing with trust monies, and had no intention of doing so in the future.
 - 25. None of the matters put on behalf of the Respondent were contested on behalf of the Board. The Tribunal accordingly accepts the matters put forward in those submissions.

Consideration

- 26. The Tribunal is satisfied that the conduct admitted by the Respondent, the subject of the referral, constitutes unsatisfactory professional conduct.
- 27. The decision of the Tribunal, while taking account of the particular matters put forward on behalf of the Respondent, must also take into account the need to ensure that the responsibilities of property agents with respect to trust accounts are observed and complied with.
- 28. As stated in a previous determination with respect to trust account transgressions, compliance with the statutory and regulatory trust account requirements is an essential aspect of the competence and diligence which a reasonable member of the public is entitled to expect from a reasonably competent property agent.

Action

- 29. Having found the Respondent to have been guilty of the conduct that was the subject of the referral, the Tribunal accordingly takes the following action pursuant to 110 of the *Property Agents and Land Transactions Act 2016*:

- (a) The Respondent is Reprimanded.
- (b) The Respondent is prohibited, for a period of 5 years from the date of this decision, from being responsible directly or indirectly for the administration of a trust account as defined in the *Property Agents and Land Transactions Act 2016*.
- (c) The Respondent is fined the sum of \$5,000, to be paid within 90 days of this decision.
- (d) The Respondent is to pay the Property Agents Board its costs of \$6,000 within 45 days of this decision.

Dated the 8th June 2022.

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

Keyran Pitt QC
President