

No 2021-0076T

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 [REDACTED] in 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.

CONDUCT COMPLAINT BY [REDACTED]

7. At all material times, [REDACTED] was the tenant of a property located at [REDACTED] [REDACTED] in Tasmania (the [REDACTED] property).

8. At all material times, the [REDACTED] property was managed by the Company.
9. On 18 May 2020, [REDACTED] entered into a 12 month lease of the [REDACTED] property. That property was privately owned.
10. On 17 June 2021, [REDACTED] lodged a complaint with the Board against the Respondent.
11. The substance of [REDACTED] complaint was that the Respondent had:
 - (a) Failed to provide written approval for security doors and lights to be installed in a reasonable time on the [REDACTED] property after receiving instructions from the Landlord to do so;
 - (b) Engaged in inappropriate behaviour and language towards [REDACTED] during property inspections; and
 - (c) Failed to appropriately engage in an attempt to resolve [REDACTED] complaint without the need to refer the matter to the Board.
12. By letter dated 12 July 2021, the Board gave the Respondent notice of [REDACTED] complaint and requested that the Respondent provide a written submission in response to those allegations.
13. A written submission from the Respondent was received by the Board's Executive Officer on 30 July 2021.
14. The Respondent denied [REDACTED] allegations.
15. On 23 November 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.
16. The Respondent's compliance to the Section 97 notice was late and incomplete.
17. The Respondent also provided information to the Board about [REDACTED] that was irrelevant and a breach of her privacy.
18. In addition to the matters raised by [REDACTED], the Investigator discovered that the Respondent had applied to the Magistrates Court of Tasmania for a Restraint Order against [REDACTED] in circumstances where the Respondent remained the manager of the [REDACTED] property. The Investigator was also satisfied that the Landlord was not aware that the Respondent had made that application, despite the Respondent's statement to the contrary.
19. The Investigator provided a report to the Board on 10 February 2022.

20. Following receipt of the Investigator's report, the Board was satisfied the Respondent's conduct as a property agent acting for the owner of the [REDACTED] property 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 the terms outlined in the complaint below.

CONDUCT COMPLAINT BY [REDACTED]

21. At all material times, [REDACTED] rented a property at [REDACTED] [REDACTED] in Tasmania. That property was at all material times owned by the [REDACTED] (the Council). The Company was employed by the Council to manage the property.
22. A complaint against the Respondent was lodged with the Board by [REDACTED] 9 June 2021.
23. The substance of [REDACTED]'s complaint was that the Respondent had:
- (a) Generally behaved in a rude and condescending manner towards [REDACTED] and her children; and
 - (b) Threatened to issue Notices to Vacate inappropriately and without instructions from the Landlord;
24. By letter dated 23 June 2021, the Board gave the Respondent notice of [REDACTED] complaint and requested that the Respondent provide a written submission in response to that complaint.
25. Written submissions from the Respondent were received by the Board's Executive Officer on 7 July 2021.
26. The Respondent denied the allegations, calling them "*unfounded and frivolous*".
27. On 25 November 2021, the Board gave the Respondent notice of her resolve to investigate [REDACTED]'s 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, verified by Statutory Declaration.
28. The Respondent's compliance with the Section 97 Notice was late.
29. The Investigator provided a report to the Board on 21 February 2022.
30. 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 the terms outlined in the complaint below.

Complaint By [REDACTED]

31. At all material times, [REDACTED] was the tenant of a property located at [REDACTED] [REDACTED] in Tasmania (the [REDACTED] property).
32. At all material times, the [REDACTED] property was managed by the Company.
33. On 11 June 2021, [REDACTED] lodged a complaint with the Board against the Respondent.
34. The substance of [REDACTED] complaint was that the Respondent had:
 - (a) Generally behaved in a "disrespectful" "rude" and "confrontational" manner towards him; and
 - (b) Threatened to issue Notices to Vacate inappropriately and without instructions from the Landlord.
35. By letter dated 17 June 2021, the Board gave the Respondent notice of [REDACTED] complaint and requested that the Respondent provide a written submission in response to those allegations.
36. A written submission from the Respondent was received by the Board's Executive Officer on 30 June 2021.
37. The Respondent denied the allegations. She claimed that [REDACTED] was rude and aggressive towards her and that, generally, she had appropriately discharged her duties as the manager of the [REDACTED] property.
38. On 25 November 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.
39. The Respondent's compliance with the Section 97 Notice was late.
40. The Investigator provided a report to the Board on 21 February 2022.
41. 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 the terms outlined in the complaint below.

THE COMPLAINTS:

42. 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 towards ██████████ in her capacity as a property agent managing a property located at ██████████ in Tasmania (the ██████████ Property) between on or about 18 May 2020 and 23 August 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) Failed to provide ██████████, a tenant of the property she was managing, with written approval for security doors and lights to be installed on ██████████ leased property in a reasonable time after receiving instructions from the Landlord to do so;
- (b) Engaged in inappropriate conduct towards ██████████, including:
 - (i) Inappropriately criticising ██████████ for wanting to have security doors and lights installed when she was aware ██████████ needed these lights and doors for protection against an abusive ex-partner, contrary to paragraph 19(k) of the Code of Conduct;
 - (ii) Generally behaving in a rude, condescending and abusive manner towards ██████████, contrary to paragraph 19(k) of the Code of Conduct;
 - (iii) Breaching ██████████ right to quiet enjoyment and privacy contrary to the terms of her lease by looking in drawers and cupboards in the property leased by ██████████ without a genuine reason to do so; and
 - (iv) Threatening to issue Notices to Vacate inappropriately and without instructions from the Landlord, contrary to paragraph 18(b) of the Code of Conduct;
- (c) Failed to notify ██████████ of the Respondent's updated contact details when she changed the name of her business;
- (d) Failed to provide a copy of the Real Estate Agency's document, which outlines the manner in which a client or customer may make a complaint against a Property Agent, despite a request from ██████████;
- (e) Created a conflict of interest by applying to the Magistrates Court of Tasmania for a Restraint Order against ██████████, but at the same time still continuing to be the manager of the property where ██████████ was residing;
- (f) Provided false and/or misleading information to the Board's Investigator by claiming the Landlord was aware that she was going to apply for a restraint order against ██████████;

- (g) Failed to co-operate with the Board's Investigator by not providing that Investigator with the complete file relating to the [REDACTED] property as she had been directed to do; and
- (h) Improperly breached [REDACTED]'s privacy by providing the Board with irrelevant and confidential information about [REDACTED] and her dealings with Centrelink.

Complaint 2: 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 11 May 2020 and 9 June 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) Generally behaved in a rude and condescending manner towards [REDACTED] and her children contrary to paragraph 19(k) of the Code of Conduct; and
- (b) Threatened to issue Notices to Vacate inappropriately and without instructions from the Landlord, contrary to paragraph 18(b) of the Code of Conduct;

Complaint 3: 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 11 May 2020 and 11 June 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 engaged in inappropriate conduct toward the Complainant including;

- (a) Generally behaving in a disrespectful, rude and confrontational manner towards [REDACTED] contrary to paragraph 19(k) of the Code of Conduct; and
- (b) Threatening to issue Notices to Vacate inappropriately and without instructions from the Landlord, contrary to paragraph 18(b) of the Code of Conduct;

CONSIDERATION

- 43. 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.
- 44. 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 Respondent's

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.

45. The Board and the Respondent reached agreement upon proposed orders which the Tribunal could make should it see fit.
46. 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.
47. 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

48. 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.