

Case Study - Confidential Information

Relevant Facts

A property agent sent texts to their clients about the sale of properties which were sold by a different real estate agency business. Some of the properties mentioned in the text were negotiated on a confidential basis and all publicly available information relating to the sale of those confidentially negotiated properties did not reveal the agreed sales amount at the time that the texts were sent.

Ground of complaint

The ground of complaint was that the property agent published information about the sales of confidentially negotiated sales to third parties and used information that was only available to licensed property agents and that the property agent disclosed information that was not yet publicly and readily available.

Discussion

The property agent indicated that the sales prices were available on a paid subscription-based platform (SBP) and the sales data which is released by REIT on a monthly basis and therefore the information is not confidential.

The SBP receives the sale price for every property in Australia from the local State and Territory Governments. This information is provided for the needs of the public and is provided to the SBP and other property data portals to display.

However, the SBP advised that it also received sale prices prior to being provided by the Government from agents directly and via real estate agent portals such as domain.com.au. In some instances, this may include an undisclosed sale price. These prices are visible to real estate agents only (not other users) and have a double asterisk next to the price (i.e.**\$100,000) with the following warning:

*** Denotes Agents Advice sale not derived from Government sources with an undisclosed sale price. Users are not permitted to pass undisclosed sales information on to any third party, however it may be used in preparation of an appraisal.*

At the times that the texts were sent, the SBP representatives confirmed that the sales prices of the confidentially negotiated properties were marked as undisclosed sales price on its platform.

REIT also confirmed that the REIT Property Report is not published in a manner for the public to access and that it provides its members with guidelines regarding the use of these property reports and the data contained within them. Members are advised regularly that sales information contained in the REIT Property Reports are not to be reproduced to promote their agency but can be used in listing presentations for market appraisals.

Finding by the Board and actions taken

The Board determined that the complaint was substantiated as the property agent did not exercise a standard of competence and diligence that the public is entitled to expect from a reasonably competent property agent as the property agent chose to ignore the restrictions of using the sales data on the SBP and the guidelines regarding the use of sales data obtained from REIT for appraisals only and not to be reproduced for marketing purposes, at the time the texts were sent, the confidential sales data was clearly not publicly and readily available.

The property agent's conduct was characterised as unsatisfactory professional conduct, but of a minor nature and the Board cautioned the property agent pursuant to section 101(6)(a) of the *Property Agents and Land Transactions Act 2016* (the Act) and accepted an undertaking given at the request of the Board pursuant to section 101(6)(b) of the Act that the property agent will not distribute information that is confidential and not publicly available.