

**IN A MATTER BEFORE  
THE AGENTS LICENSING BOARD  
OF THE NORTHERN TERRITORY**

**APPLICATION FOR DISCIPLINARY ACTION**

**BETWEEN:** **DAVID PRYCE and SONYA PRYCE**  
Applicants

**AND** **KATE SKINNER**  
First Respondent

**PETER NEVILLE**  
Second Respondent

Date of hearing: **14th December, 2010**

Chairperson: Sue Philip  
Agent Member: Denise Meeking  
Agent Member: David Forrest

Appearances:  
Applicant D & S Pryce No Appearance  
First Respondent Kate Skinner No Appearance  
Second Respondent Peter Neville appeared in person

**STATEMENT OF REASONS FOR DECISION**

**Background**

1. On the 17th May 2010 the Applicants, David and Sonya Pryce made application to the Board under 68(3) Agents Licensing Act (hereinafter called "ALA") for Disciplinary Action against the Respondents, Kate Skinner and Peter Neville, employees of Elders Rural Services Australia Limited trading as Elders Real Estate Branch Office - Alice Springs (hereinafter called "Elders") on the ground set out in Section 67(1) (c) ALA of breaches of the rules of conduct for agents, such rules being contained in Section 65 ALA.

2. After consideration of the Application, the Board set the matter down for hearing on 14th December 2010, at which time Mr Peter Neville attended in person. None of the parties were represented by Counsel.

### **The Issues**

3. The issues in this Inquiry were:
  - a. a consideration by the Board as to whether the Respondents' actions amounted to a breach of the rules of conduct as contemplated by the terms of Section 65 ALA;
  - b. if so, the appropriate disciplinary sanction.

### **Relevant Legislation**

4. Disciplinary action may be taken against a licensed agent on the grounds provided in section 67 of the Act.

#### **67. *Grounds for disciplinary action***

*(1) Subject to this Part, the Board may take disciplinary action in accordance with this Part against a licensed agent on one or more of the following grounds:*

*(c) the licensed agent has been guilty of a breach of the rules of conduct for agents;*

5. Applications for such action are made under Section 68

#### **68. *Applications for disciplinary action***

*(3) Any person may apply, by notice in writing lodged with the Registrar, for disciplinary action to be taken against a licensed agent on one or more of the grounds referred to in section 67.*

*(4) Where –*

*(a) subject to subsection (5), an application for disciplinary action to be taken against a licensed agent is lodged in accordance with this section; or*

*(b) the Board considers that there may be grounds under section 67 for disciplinary action to be taken against a licensed agent,*

*the Board shall hold an inquiry.*

6. The Applicants relied on Sections 65(1)(c), (d) and (da) of the Act to ground the Application.

**65. Rules of conduct**

(1) *A licensed agent who –*

*(c) fails to perform his duties to his principal or to carry out the lawful instructions of his principal; or*

*(d) fails to exercise due skill, care or diligence in carrying out his duties on behalf of his principal; or*

*(da) fails to exercise due skill, care or diligence when dealing with any person whomsoever in the course of conducting business as an agent;*

*is guilty of a breach of the rules of conduct for agents.*

7. In the event of the Board granting the applications, the Respondent may be dealt with as provided in section 69 of the Act.

**69. Powers of Board after inquiry**

*(1) Where, at the conclusion of an inquiry conducted pursuant to section 68(4), the Board is satisfied that it is authorised to take disciplinary action against a licensed agent, the Board may –*

*(a) reprimand or caution the agent;*

*(b) by notice in writing, impose a fine not exceeding 50 penalty units on the agent;*

*(c) by notice in writing, suspend the licence of the agent until the expiration of the period, or the fulfilment of a condition, specified in the notice; or*

*(c) by notice in writing, revoke the licence of the agent.*

**Conduct of the Matter**

8. The Board was provided with Briefing Papers including the Investigation Report and various correspondence between the Applicants, Respondents and

the Registrar of Land, Business and Conveyancing Agents (hereinafter called "the Registrar"). The Board was advised that the Applicants were not available to attend the hearing but it noted their correspondence indicating they were happy to have the matter proceed on the basis of their complaint and other materials previously provided. Ms Skinner was also unavailable but advised she relied on her responses to the Registrar and contained in a letter dated 3<sup>rd</sup> June 2010. Mr Neville, representing himself, advised that he had read the Investigation Report and attached material and agreed with the matters set out therein.

### **The Facts**

9. The First Respondent is a registered Agent's Representative AC 1643 and at all relevant times was employed by Elders. The Second Respondent holds an unrestricted Real Estate and Business Agent's Licence, AL553, and, at all relevant times, was the nominated Business Manager for Elders, the holder of Real Estate and Business Agent's Licence, AL222.

10. The Applicants entered into a Property Management Agreement with Elders in respect of a residential property owned by the Applicants and situated at 25 Bowman Close, Alice Springs (hereinafter called "the property"). The copy of the agreement provided to the Board was undated but it was clear that the property had been managed for some time by Elders on behalf of the Applicants. The Agreement was signed on behalf of Elders by its then property manager, Jackie Blom.

11. During August 2009, Power and Water Authority (hereinafter called "PAWA") conducted certain works on a sewerage easement passing through the property which caused damage to the garden. Elders, through its employee, Jackie Blom, negotiated with PAWA to repair the damage and then arranged for the repair work to be carried out by a landscape gardener, Wayne Tregoe. The cost of that work was \$965. Mr Tregoe also undertook regular garden maintenance at the property.

12. Following this, there were several changes of property manager in the employ of Elders. On the 18<sup>th</sup> February 2010 the applicants were contacted by Wendy Linins, an employee of Elders who was then undertaking management of the property, in respect of payment of an invoice from Mr Tregoe. The Applicants gave express written instructions that the invoice not be paid from their account and directed that the matter be referred to PAWA.

13. On the 19<sup>th</sup> February 2010 Ms Linins left the employ of Elders. In March the First Respondent, as business manager paid an invoice from Mr Tregoe in relation to the property, then some four months overdue. In ignorance of the Applicants' express instructions, she paid the invoice from the Applicants' funds held by Elders.

14. On 26<sup>th</sup> March 2010, the applicants received their monthly income statement from Elders and became aware that the amount of \$965 had been deducted from their account against their express instructions. After further correspondence the Applicants made a formal demand for the return of their money on 27<sup>th</sup> March 2010. The money was subsequently reimbursed to the Applicants on the 8<sup>th</sup> April 2010.

15. The Board was satisfied that the Second Respondent, Mr Peter Neville, was in breach of the rules of conduct specified in Section 65(1) of the ALA. It was common ground between the parties that the payment to Mr Tregua was unauthorised and in breach of the express directions of the Applicants. The Board determined that the breach of Section 65(1) occurred through failure of Elders to set in place proper systems and controls for the management of the Applicants' property. The second respondent as a licensed agent and Branch manager of Elders held responsibility for such failure. This amounted to a failure to carry out the lawful instructions of his principals and to exercise due skill care and diligence

16. The First Respondent, Ms Skinner, on the other hand was an agent's representative without control over the systems she was subject to and the Board did not find her guilty of a breach.

17. Having determined that the Second Respondent had committed breaches of the rules of conduct in Section 65(1), the Board was authorised to take disciplinary action under Section 67(1)(c).

### **Determination**

18. In considering the nature of the disciplinary action to be taken against the Respondent, the Board considered the prompt refund of the Applicants' monies once the matter was brought to Mr Neville's attention and commended him on it. However, the Board noted that the unauthorised payment of clients' funds, albeit through carelessness, is a very serious matter and repeat occurrences could lead to very serious consequences. The Board urged Mr Neville and Elders to ensure that proper systems and controls be put in place and maintained to avoid such occurrences.

19. The Board also noted that, in future, a prompt and personal formal apology to aggrieved clients was a measure which should be adopted by Mr Neville and Elders when an error has occurred. This did not appear to have transpired in this case as the apology was directed through the Board and only after proceedings had commenced.

20. The Board noted the Second Respondent fully co-operated with the Registrar's investigation and made early admission of breaches and while

accepting that the breaches by the Second Respondent were serious, the monies had been fully and timely refunded. There was no evidence of any bad faith.

**Action**

The Board determined at the Inquiry held on 14th December 2010, that it was satisfied that the Second Respondent, Peter Neville, had committed breaches of the rules of conduct for agents that justified disciplinary action against him. In exercise of its powers under Section 69(1), the Board cautioned the Respondent.

For the Board



Suzanne Philip  
Chairman  
22 December 2010